

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, et al.

Plaintiffs,

Civil Action No.
1:21-cv-11558-LTS

v.

AMERICAN AIRLINES GROUP, INC.,
et al.,

Defendants.

BEFORE THE HONORABLE LEO T. SOROKIN, DISTRICT JUDGE

BENCH TRIAL
Day 13

Monday, October 17, 2022
8:59 a.m.

John J. Moakley United States Courthouse
Courtroom 13
One Courthouse Way
Boston, Massachusetts

Rachel M. Lopez, CRR
Official Court Reporter
raeufr@gmail.com

A P P E A R A N C E S

On behalf of the Plaintiff United States of America:

United STATES DEPARTMENT OF JUSTICE
BY: WILLIAM H. JONES, III; JOHN R. DOIDGE; MAISIE A.
BALDWIN; AND GRANT A. BERMANN
450 Fifth Street, Northwest
Suite 8000
Washington, D.C. 20530
(202) 514-0230
bill.jones2@usdoj.gov
dick.doidge@usdoj.gov
maisie.baldwin@usdoj.gov
grant.bermann@usdoj.gov

On behalf of the Defendant American Airlines Group, Inc.:

LATHAM & WATKINS, LLP
BY: DANIEL M. WALL
505 Montgomery Street
Suite 2000
San Francisco, California 04111
(415) 391-0600
dan.wall@lw.com

On behalf of the Defendant JetBlue Airways Corporation:

SHEARMAN & STERLING LLP
BY: RICHARD F. SCHWED
599 Lexington Avenue
New York, New York 10022
(212) 848-4000
richard.s`chwed@shearman.com

TABLE OF CONTENTS**TRIAL WITNESSES**

| | |
|------------------------------|-------------|
| On behalf of the Defendants: | <u>Page</u> |
| CHAD SCHWEINZGER | |
| By Mr. Wall | 23 |
| By Mr. Bermann | 72 |
| By Mr. Wall | 99 |
| MARK ISRAEL, Ph.D. | |
| By Mr. Wall | 101 |

EXHIBITS

| | |
|------------------------------|-----------------|
| On behalf of the Plaintiffs: | <u>Admitted</u> |
| Number PX1144 | 93 |
| On behalf of the Defendants: | <u>Admitted</u> |
| Number DX956 | 47 |

P R O C E E D I N G S

(The following reported by Robert Paschal.)

(In open court at 8:59 a.m.)

THE COURT: Good morning.

MR. WALL: Good morning, Your Honor.

THE COURT: So one, in terms of scheduling Monday, I understand from Ms. Belmont, you want to have Monday, the 9:00 to 1:00, that's fine. I had reserved for you all those days I said before, so as we go, that's fine. Second, I had raised with Ms. Belmont to raise with you on this privilege question. I saw the government's reply of whether -- not whether I was thinking -- I was interested in looking at the -- I think it's eleven that remain for sort of in camera review. But I think she indicated you had some thoughts about that, so I'm happy to hear you, Mr. Wall.

MR. WALL: Yeah, thank you, Your Honor.

So, unfortunately, we had the situation here, of course, where you are both the trier of fact and the person who will decide whether they're privileged. And So if you look at the in camera -- if you look at the documents in camera, the same brain that is going to decide this case is going to see the material that is -- that is privileged. And so I want to just make a couple of comments.

I just want to put something on the record so that it's very clear. On May 22, 2020, --

1 THE COURT: Just to orient me for a second, is that
2 the day of those text messages --

3 MR. WALL: That's one week before.

4 THE COURT: One week before. Okay. Thank you.

5 MR. WALL: On May 22, 2020, my partner Farrell
6 Malone, who is sitting over here, sent out an e-mail to a
7 number of people saying that, in substance, there's some work
8 we want to do for the regulatory case. And that's the
9 setting of all of this stuff.

10 There was subsequently a set of calls -- I was on
11 one myself on May 26th -- in talking about what we call the
12 "counterfactuals." And there's a long history here. The
13 consumer benefits type of calculation that Dr. Israel is
14 going to put on has been done in antitrust immunity
15 applications, and it had been done with respect to the West
16 Coast International Alliance. It's been done with respect to
17 airline mergers for years. It's sort of a known entity that
18 people understand.

19 And experience had taught us all that what happens
20 whenever this is done is that the folks on the other side,
21 the department of justice here, might be the DOT in an
22 antitrust immunity application, will ask whether you have the
23 proper but-for world. That's just something --

24 THE COURT: The proper what?

25 MR. WALL: The but-for world, the counterfactual.

1 Right? And it's not a tough prediction to make. It's
2 just -- it literally happens all the time.

3 THE COURT: Sure.

4 MR. WALL: And you can imagine there's great
5 prospect for gaming. If you're on our side of it, you want
6 to set the baseline high. If you're on their side of it, you
7 want to set that -- wait. I said that wrong. If you're on
8 our side of it, you want to set the baseline low. If you're
9 on their side of it, you want to set the baseline high, and
10 so there's a lot of potential for just arguing about it.

11 And we anticipated that correctly, that that's one
12 of the things that the Department of Justice would argue. So
13 a process begins on that point, at that point in time. And
14 there's a lot of e-mail that is generated, and many, if not
15 most -- or most, if not all, rather, of the e-mails that they
16 want you to look at are generated from that process, involve
17 members of my team, involve members of the Sherman team
18 that's representing JetBlue, of all the economists, but also
19 involve people who were in the clean team process because of
20 the expertise that they would have in providing experts to
21 that. Okay?

22 That's what all of this is. And the call, the
23 May 29th call, as you'll actually hear today, was about
24 that -- that process. And so this representation that is
25 being made here that, no, this is actually what is going to

1 unlock the secret real business case of the NEA that doesn't
2 have any growth involved in it or anything like that, it's
3 just -- it's utterly false and it's utterly unfounded in
4 anything other than speculation about the contents of
5 privileged documents.

6 And if you look at those documents, you will -- the
7 main thing that you will see is the back-and-forth between
8 lawyers and their clients thinking about these issues.
9 That's what you're going to see. You're going to see people
10 like Mr. Malone saying, I think that we might want to do it
11 three different ways. I think the justice department might
12 want to do this. And people saying, well, we could do that
13 or we couldn't do that or -- that's what you're going to see.

14 That's 100 percent of that content. And in our
15 view, the justice department has not made out any baseline
16 case at all that that content wouldn't be privileged.
17 Instead, what they're saying, what their argument is now, and
18 the only reason this is alive anymore, is that Jordan Pack's
19 testimony waived that privilege. Well, you don't need to
20 look at those documents to decide whether Jordan Pack's
21 testimony waived the privilege. You heard Jordan Pack's
22 testimony.

23 And in our view, this is very simple. There's a
24 long-standing rule that you never waive a privilege by
25 revealing as much as you need to reveal to establish the

1 privilege. That's -- otherwise you're in a catch-22
2 situation. So for someone to say, yeah, the subject matter
3 of this was a discussion about the regulatory issues, that's
4 not only not a waiver, it's something we need to say to
5 establish the privilege.

6 So they put this in issue now and are trying to set
7 this up so, in a way, that even if you agree with us that
8 this was entirely privileged, which they don't really
9 contest, because their argument is waiver, you'll see it all
10 anyway, and I don't think that's appropriate. And I -- you
11 know, I'll respect however Your Honor wants to do it, but it
12 just seems to me that this has been set up in a way that they
13 have their cake and eat it, too, because even if they -- if
14 you agree with this, you've still seen all of the privileged
15 material.

16 THE COURT: So let me tell you a couple thoughts
17 about that, then. One is, just so the way I've been -- the
18 two different issues that you're talking about, I think. One
19 is how the determination is made by the Court with respect to
20 privilege, and the second is the substance of the privilege
21 issue.

22 So as to the second, talking about the second
23 first, do I have -- the way I thought about this is you
24 designated certain things as privileged. They're just
25 privileged because no one brought it to me. I don't -- I

1 have -- and I don't mean this in any way. Just this is how I
2 think about all the privileged questions. If you designate
3 something privileged and they don't object, to me, it's
4 privileged, right? Whether you're right or you're wrong,
5 like, in any way, shape, or form.

6 MR. WALL: Understood.

7 THE COURT: But that's where -- because it's not
8 something that the Court ever engaged with, and I'm perfectly
9 happy not to have engaged with all the other privileged
10 questions and -- like, but they then brought it here, and
11 Pack said what he said. I don't need to look at the
12 documents to determine what Pack said and the significance or
13 lack thereof of what he said.

14 What I understand the government to be arguing is
15 this: one, that Pack made a waiver, and as a result of his
16 waiver, he waived not just the documents that were discussed
17 in the -- I don't have the date right --

18 MR. WALL: May 29th.

19 THE COURT: -- the 5/29 meeting, but he waived the
20 whole subject.

21 MR. WALL: Our whole regulatory strategy.

22 THE COURT: The whole regulatory subject.

23 MR. WALL: Yeah.

24 THE COURT: Yeah. And I will -- I'm not so sure
25 that -- while I think -- I think Pack probably said more than

1 merely, "I received legal advice on the topic of regulatory
2 discussion, or regulatory approval," I'm not so sure he
3 waived the whole regulatory subject.

4 The second argument I understand the government to
5 be making off his statements is that, well, on -- they seem
6 to be saying that there's a certain amount of sort of branch
7 of privilege waiver that encompasses, like, fairness. If
8 there's a certain amount of waiver -- you get enough to
9 fairly engage with the issue and they're saying that's where
10 we get these two weeks. And that's what -- the second, sort
11 of analytically, the way I understand them to be arguing it.

12 Then separate from that, to be candid of all of
13 your arguments, I sort of think that what they're really
14 arguing is they don't really agree with you on privilege at
15 all, and this is just now they're bringing up a privilege
16 question because of what Pack did, but it's really about the
17 underlying, not so much waiver, but just whether they agree
18 with you on -- whether this is privileged or not.

19 So --

20 MR. WALL: And in that, Your Honor, if I may, was
21 an issue that they raised in June.

22 THE COURT: Sure. I understand that --

23 MR. WALL: June --

24 THE COURT: -- there was back-and-forth with you
25 for a long time.

1 And so I'm trying to figure out -- and what I --
2 what underlies it factually, as I understand it, is I don't
3 understand them to be all that interested in what -- if you
4 were on the 5/29 call or whatever lawyers on the call -- what
5 those lawyers said. What I understand them to be more
6 interested in is, in some -- is how and why what baselines
7 were picked and weren't picked.

8 And to some -- that's what I think they're
9 interested in. And I think that, to the extent that
10 baselines were picked and not -- to the -- what the fact
11 witness's views of that and what the expert relied upon in
12 making those, certainly, what the fact witnesses just --
13 views are, we did this or did that, they can ask all that.
14 And that's not --

15 MR. WALL: And that will come up today.

16 THE COURT: Right.

17 MR. WALL: That's going to come up right now,
18 actually.

19 THE COURT: Right. And that doesn't strike me as
20 impacted by, per se, the privilege. What I understand them
21 to say saying is they want these things in order to do a
22 better job at that maybe.

23 So all of that is to say that's what I understand
24 the issues to be are, and I re-read -- after I read the
25 reply, I re-read your -- the privilege log about the ones

1 that are still at issue. And it's not clear to me from
2 the -- like, the privilege log describes it in a way that
3 makes me think they're privileged because, of course, that's
4 what the purpose of the privilege log is. And so as to
5 the -- so in thinking about resolving it, to be honest with
6 you, I just thought, like, I can't really figure out all
7 these questions unless I look at the documents. I will tell
8 you that it occurred to me, that, huh, I'm the fact finder.
9 And, for example, I already excluded a document not
10 privileged but there was the document I thought about, and I
11 know what it says and I excluded it and I'm not going to rely
12 upon it.

13 And I understand there is this general principle --
14 judges are superhuman and they can put aside all the things
15 they know and everything. But, obviously, privilege is a
16 little bit different and there's more. And so you haven't
17 asked for this, and I'm not sure what I think about it, but
18 we're being so pretty -- we're spending a lot of time in this
19 case anyway. I mean, it's not inconceivable to me -- I'm not
20 saying I would do it for sure, but I'm at least happy to
21 discuss it of whether maybe I should have those, like, eleven
22 documents, like, looked at by, like, another judge. I could
23 get a magistrate judge to look at it, and then I could -- I'm
24 deciding the legal questions. I could just say to them,
25 These are the things I'm thinking about. Is it -- don't tell

1 me what it is, but does it -- you know, if here's the sort of
2 framework and then --

3 MR. WALL: That would resolve this in a heartbeat,
4 frankly.

5 THE COURT: And then the -- so that's a possibility
6 of doing it that way. And then that limits -- you know, I
7 will tell you, if I do that, it takes a little bit more time,
8 because it occurred to me the eleven documents they could
9 probably look at in 15 minutes, I suspect.

10 MR. WALL: No, I understand. I would also tell
11 Your Honor another way to do it is to just consider doing it
12 iteratively. If you look at the documents that is on the
13 privilege log --

14 THE COURT: Hold on one second. Let me get the
15 log.

16 What page are you on the log?

17 MR. WALL: It's -- well, in my printout, it's one
18 of five. It's the bottom entry, 5/22/20 from Farrell Malone
19 to various people, privileged 11167.

20 If you look at that document, frankly, it has a lot
21 of lawyer thought and analysis and reasoning and so forth in
22 it. But it's going to definitively end the inquiry as to
23 whether these were legal discussions and considerations or
24 not.

25 MR. JONES: Your Honor, it certainly may for that

1 individual document. The question is the whole set of the
2 eleven.

3 And I would also point out, Your Honor,
4 certainly --

5 THE COURT: I'm sorry, just say that again for one
6 second.

7 MR. JONES: I'm sorry.

8 THE COURT: It's not your fault.

9 MR. JONES: Looking at the one document would
10 resolve the one document, but there'd still be the other --
11 the other ten and it's not necessarily clear that it would
12 follow that if that one document Mr. Wall is pointing to
13 actually is privileged, that all of the others in the set are
14 as well.

15 MS. BALDWIN: And, Your Honor, Maisie Baldwin for
16 the United States.

17 That same e-mail thread appears to only implicate
18 four of the total eleven. So that would still leave us with
19 seven additional documents.

20 MR. WALL: But that's not true, because what that
21 e-mail thread is is Mr. Malone initiating the process of
22 considering counterfactual scenarios.

23 MS. BALDWIN: Well, Your Honor --

24 MR. WALL: And this entire thing -- excuse me.

25 This entire thing is about the internal

1 consideration for regulatory purposes only of counterfactual
2 scenarios.

3 THE COURT: Go ahead, Ms. Baldwin.

4 MR. JONES: Your Honor, just taking a step back, we
5 are here after a long process in which we had come to, if not
6 quite a resolution, a détente on these documents, and then
7 Mr. Pack testifies. And so really why we're back here now on
8 this issue is simply that they opened the door. They're
9 using Mr. Pack's testimony to talk about some aspects of
10 this, but not the full view. And that's all we're --

11 THE COURT: But in a way, like, to me, maybe I'm
12 missing something here, but in some ways, Mr. Pack's
13 testimony, it strikes me maybe as more waiver than the
14 defendants want to concede and also more red herring than --
15 like in other words, before Mr. Pack testified, you had these
16 text messages.

17 The text messages, if I gave it all of the
18 inferences you could get for the government from it, where
19 some people for American said, "Oh, my God, DOJ could kill
20 this in a heartbeat," right? That's essentially what they
21 said.

22 All right. Like to be honest with you, does that
23 really matter? Like, what is the significance of those
24 people saying that? I'm going to make -- I can't defer to
25 that, right? That would be wrong. I have to make an

1 independent decision about whether the evidence and the law
2 warrants it, which is what I'm going to do. Is it evidence
3 about what their opinion is? Yes. Do I care what -- what is
4 the weight of opinion that -- Mr. Pack was an excellent in
5 many respects witness, obviously, a smart person, but his
6 opinion of antitrust law to the NEA, what is the
7 likelihood -- or rephrased is this is Mr. Wall's view
8 expressed through Mr. Pack of what the -- Mr. Wall's real
9 view is.

10 MR. WALL: I wasn't on the call. Don't lay it on
11 me.

12 THE COURT: Whomever, all right? You're the person
13 who knows more about antitrust law than -- except possibly
14 Vasu, right?

15 MR. WALL: No way.

16 THE COURT: So even if it's Mr. Wall's opinion, so
17 to speak, coming through Mr. Pack, what difference -- like,
18 so the way I really see it, like, so those things, it strikes
19 me more as it's either just -- it's just I'm thinking about
20 it, okay, he said what he said. It's whatever level of
21 waiver it is and where does it go? And is it just this? Is
22 it fairness? Is it subject matter? It's an opportunity
23 which I don't quarrel with for you to open up an issue that
24 hadn't been opened up.

25 But in terms of the particular text messages, it's

1 eluding me as to how weighty -- why those text messages are
2 all that weighty. You can tell me why. That's why I'm
3 telling you all this, but --

4 MR. JONES: Well, Your Honor, I would start by
5 saying certainly it's not their opinion, the opinion of
6 Mr. Pack or Mr. Schweinzger. It's not just the opinion, kind
7 of the ultimate question opinion. It's their review of the
8 full network results.

9 So as they were looking at how the -- the NEA would
10 be measured, looking at full network results, their analysis
11 of that and their conclusion or one of their conclusions that
12 it was "*no bueno*." So it's sort of that, Your Honor. It's
13 not the ultimate question.

14 I certainly agree that the views of the fact
15 witnesses on antitrust law don't --

16 THE COURT: Right, but so it's their view on the
17 ultimate question of whether there's benefits for doing this
18 or not. Just -- whether they get something or not.

19 MR. WALL: Your Honor, if I may, this is getting --

20 THE COURT: But what does that have to do with the
21 privilege?

22 MR. JONES: Well, Your Honor, it certainly --
23 again, it's the -- using these witnesses in two ways. So
24 wanting the Court to take kind of -- credit their views and
25 the views of their work that went to Dr. Israel as an input

1 to his work, but then on the other hand, wanting to shield
2 from consideration here those views as they analyzed the full
3 network results.

4 MR. WALL: I just have to respond to this, because
5 we're just now in complete make believe at this point. They
6 will find out in a few moments from the testimony of
7 Mr. Schweinzger that the subject of "no bueno" is them, it's
8 their way of thinking. That's what was no bueno: them.
9 This is --

10 THE COURT: Which them?

11 MR. WALL: The Department of Justice.

12 THE COURT: Oh, I see.

13 MR. WALL: Wasn't saying the NEA was no bueno. He
14 was saying if you look at it the way that they are going to
15 look at it, nothing would ever be okay, and that's what "no
16 bueno" is.

17 The v4 schedule that they make so much of was never
18 run through Raven, was never part of a business case, was
19 never relied upon by any of the decision makers. They didn't
20 even know about it. Nothing about that. This is a sideshow
21 that's trying to suggest that you shouldn't believe the
22 predictions of consumer benefits that come out of the actual
23 business case that was -- that was -- that was run.

24 And that's all this is about. There's -- this
25 doesn't reveal our thinking about the NEA. It reveals our

1 thinking about what they're going to try to argue about the
2 NEA. And, by the way, we were spot on. And that's what this
3 is about, exclusively.

4 MS. BALDWIN: Well, Your Honor, we haven't had the
5 opportunity to pressure test any of Mr. Wall's claims because
6 the documents have been withheld.

7 MR. JONES: I --

8 MR. WALL: And we would never have brought this up
9 if they didn't put it in the opening statement.

10 MR. JONES: -- relied on the factual claims about
11 what the clean team did, so it also comes into play in that
12 matter -- in that manner as well.

13 MR. WALL: I just don't want to hear this narrative
14 that we injected this into this case. Mr. Jones put this in
15 his opening statement, late night frenzied text of senior
16 executives saying that this was no bueno.

17 It was actually the main theme of the press reports
18 that were picked up on the first day of trial. We never
19 would have gone into that on our own. They injected this
20 into this case. So if you want to talk about swords and
21 shields, they're the ones that are trying to get away with
22 swords and shields here.

23 THE COURT: Okay. So let me make one more
24 observation and then we should get going.

25 I think the following is correct and your -- I'm

1 confident one or both of you will disagree with me if I'm
2 wrong, that all of the fact witnesses can be asked what
3 comparisons they did and what were the pros and cons of those
4 comparisons, what comparisons that they didn't do, posed like
5 you could have done this, you could have done that, and what
6 would be the pros and cons of those comparisons.

7 And you can ask -- and I think you can ask what
8 comparisons weren't done and what the pros and cons -- and
9 you can ask the reasons why. The only conceivable reason
10 that would be an off-limits reason is if somebody was,
11 like -- if someone didn't do a comparison or did a comparison
12 because a lawyer said, for preparation for legal reasons, we
13 want you to do this or not do this. Then that's where there
14 would be an objection to privilege as to that part of the
15 answer before it was given and, other than that kind of
16 privilege issue, those witnesses can give all the factual
17 testimony, which is the foundation, I think, of what was
18 done, what wasn't done, historically, and what -- and the
19 factual foundation for evaluating it.

20 With Dr. Israel, who is the expert, it seems to me
21 it's fair game to ask him what he did and didn't consider,
22 why he did what he did, why he didn't do what he didn't do or
23 why he didn't consider some alternative comparison. And
24 that, I think, is all fair game and not -- without regard to
25 what I resolve on this motion. I think that's right as to

1 the scope of inquiry of those witnesses.

2 Does that make sense?

3 MR. WALL: Agreed.

4 MR. JONES: Yes, sir, Your Honor.

5 THE COURT: Okay. So what this inquiry is about,
6 then, is some additional information -- so then it seems to
7 me this is a privileged inquiry. I'm going to look at it. I
8 guess the question really circles back -- I haven't resolved
9 it yet -- the question really comes down to should I have
10 somebody else look at it because I'm the fact finder.

11 And it doesn't offend me. I'm not offended if
12 anybody asks me that. Like, I don't -- that makes no
13 difference to me. I think if I look at it, it's -- the
14 upside is it's a faster resolution probably just because you
15 can probably -- I imagine you could give them to me some time
16 between a minute from now and 15 minutes from now, and I
17 could probably look at them pretty quickly and take a quick
18 break.

19 On the other hand, I'm sure -- I have no doubt I
20 could get another judge, probably a magistrate judge, to look
21 at this within today for sure, maybe this -- probably this
22 morning, but I'd have to take five minutes to find somebody.
23 And then there would be a little discussion for me to
24 understand the legal context and they be -- and then I
25 would -- the purpose of that would be for not -- for that

1 person not to report to me the substance of what's in those
2 documents.

3 MR. WALL: Your Honor, at this point, we've spent
4 so much more time on this than it deserves, but whatever you
5 choose to do is fine with us.

6 MR. JONES: As with us, as well, Your Honor.

7 THE COURT: Well, then, I'm probably just going to
8 look at them for efficiency sake, because it's -- I'm not
9 adverse to giving it to someone else, but if it's no
10 difference to you --

11 MR. WALL: Again, I suggest that you start with the
12 document I mentioned. It's the first in the sequence and
13 decide how much more you need to look at, but we leave it
14 entirely in your hands, Your Honor.

15 THE COURT: Okay. All right. Then why don't you
16 give me the whole pile with that one first, and when you
17 have -- we'll start. When you have the pile, I'll stop and
18 I'll take a look.

19 MR. WALL: Great.

20 MR. JONES: Thank you, Your Honor.

21 THE COURT: Okay. All right. We have the --
22 how -- I'm not going to say his name.

23 MR. WALL: Schweinzger.

24 THE COURT: Mr. Schweinzger, yes. If you would
25 come forward and sit in the witness box. I remind you you

1 remain under oath.

2 **CHAD SCHWEINZGER**

3 having been duly sworn, testified as follows:

4 **CONTINUED DIRECT EXAMINATION BY COUNSEL FOR AMERICAN AIRLINES**

5 BY MR. WALL:

6 **Q.** I suspect that this happens to you a lot in your life,
7 but how do you pronounce your last name again?

8 **A.** Well, it depends on who you ask, but I say *Swinez-ger*.

9 THE COURT: You would seem like to be the oracle on
10 this question.

11 THE WITNESS: Different members of my family say it
12 differently.

13 BY MR. WALL:

14 **Q.** Yeah. The follow-up question is how often do you have to
15 spell your last name to other people?

16 **A.** All the time, which is why I just say --

17 **Q.** Okay. Thank you, sir.

18 All right. So when we broke, in our last session,
19 we were talking about Defendants' Exhibit 1075A, which of
20 course is a document that's put up here and it's pretty well
21 known in this case so far. The Project Garland overview and
22 status update.

23 And I think you already testified to this, but just
24 to set the table, remind us again of over what period of time
25 was this deck prepared.

1 **A.** Yeah, so this document would have been created after we
2 had finalized the -- the Raven runs to -- with the optimized
3 schedule as a presentation for Vasu and then ultimately
4 turned into a status update for our senior leadership team,
5 so that would have been somewhere between the 22nd of May and
6 probably the 26th or 27th.

7 **Q.** So when were the Raven runs done on the v2 optimized
8 schedule?

9 **A.** They would have needed to be completed prior to that or
10 during that time period, so between --

11 **Q.** Okay. And so we're not going to spend a lot of time with
12 this, but I do want to pull up slide 8 for a moment. And
13 this one is -- "the East Coast JV creates more value for
14 customers than a simple codeshare." There's just a lot of
15 numbers on the two tables there. Do you see those?

16 **A.** I -- I do.

17 **Q.** Okay. The only question that I -- that I want to ask you
18 at this time is do -- do those numbers have any relationship
19 to what we've heard referred to as the "v2 optimized
20 schedule?"

21 **A.** Yes.

22 **Q.** What's that relationship?

23 **A.** These, I believe, were the outputs of the Raven run using
24 the v2 optimized schedule that we were -- we were using to
25 create the business case for the NEA.

1 Q. Okay. Thank you, sir.

2 THE COURT: And just so I can keep it straight
3 between v2 and v -- v2 is the schedule joined together, the
4 optimized schedule of JetBlue and American in the Northeast
5 in 2023, or is it in 2019?

6 THE WITNESS: It would have been based -- the
7 schedule itself is not -- doesn't have a defined time period
8 to it, but it would be what the clean team worked on, the
9 output of the clean team product, which is the v2 schedule,
10 which is what we used to run the Raven results to determine
11 the --

12 THE COURT: And based on fleets that existed in
13 2019, or based on projected fleets for 2023, or something
14 different?

15 THE WITNESS: I recall from -- I believe -- and I
16 can't speak to the JetBlue side, but from the American
17 Airlines side, it would have been what we had and what we had
18 on order. We weren't -- we didn't have a business case in
19 here that I recall that required us to buy new airplanes or
20 do anything different than we were already planning to do.

21 THE COURT: So -- but it would have been what you
22 had in 2019, or what you had in 20 -- what you had in the
23 queue for -- like, if you looked at some future date, what
24 you had in the -- obviously, in the future, there's, like,
25 planes coming in and --

1 THE WITNESS: Yeah.

2 THE COURT: -- potentially planes going out.

3 THE WITNESS: It would have been the latter. So we
4 had planes come in. I think we talk about the XLRs in here.
5 Those were the planes we had on order at the time.

6 THE COURT: Okay.

7 BY MR. WALL:

8 **Q.** Let me just follow up a little bit on that. Is there a
9 fleet constraint built into the v2 schedule? In other words,
10 that you can't add planes?

11 **A.** No.

12 MR. BERMAN: Objection. Leading.

13 MR. WALL: Not a leading question.

14 THE COURT: Overruled.

15 THE WITNESS: No. No. That's -- there's no fleet
16 constraint, no assumption that we wouldn't get the planes we
17 had on order or anything like that. We wouldn't have built
18 that in.

19 BY MR. WALL:

20 **Q.** So more broadly, in the process of coming up with a
21 business case for the NEA, do you recall there ever being
22 consideration of a scenario in which the airlines wouldn't,
23 one way or the other, create -- or find the aircraft to
24 support the demand that you were -- you were projecting?

25 **A.** No.

1 **Q.** Okay. Okay. All right. So in -- as you've heard,
2 there's a lot of attention that is being paid to this meeting
3 on the 29th of May. Let me just ask you as a foundation for
4 that, do you -- do you recall from your own experience in
5 working on the NEA where there came a time when you got
6 involved in discussions with counsel and with consulting
7 economists about regulatory issues?

8 **A.** Yes.

9 **Q.** And generally speaking, do you remember when that process
10 occurred relative to the work that you had done in creating
11 the optimized schedule and figuring out the benefits from the
12 optimized schedule?

13 **A.** Yes. As I recall, we were completing the internal
14 business case for American Airlines, and at that point in
15 time, you know, we started to work on the regulatory case as
16 well.

17 **Q.** Okay. So I want to pull up Plaintiffs' Exhibit -- what
18 is a demonstrative -- 37 -- 372A, which is a collection of
19 texts from May 29th. And I want to focus on texts that
20 involve you and Jordan Pack that occur towards the latter
21 part of this demonstrative.

22 But before I do that, just -- so I wanted to nail
23 this down again: as of May 29, 2020, what was the state of
24 your evaluation of the business case for the NEA?

25 **A.** Yeah, so it was largely complete. So this document was

1 the -- sort of the foundation for moving the business case
2 forward and that was --

3 **Q.** The Exhibit 1075?

4 **A.** Yes, that's correct. That's what we were taking -- I
5 believe, that very next Monday, to the senior leadership
6 team.

7 **Q.** Okay. Were you still trying to figure out what the
8 optimized schedule would be?

9 **A.** No, I don't believe so.

10 **Q.** Okay. All right. So this is one of the things that
11 witnesses in our case have to deal with, do you have a
12 recollection of a conference call on May 29 with a bunch of
13 lawyers and economists?

14 **A.** I do.

15 **Q.** Okay. And do you know at approximately what time in your
16 workday -- first of all, you work in Dallas, right?

17 **A.** That's correct.

18 **Q.** Okay. About what time in the Dallas workday did that
19 occur?

20 **A.** It was in the late afternoon.

21 **Q.** Okay. So there's a text here that has a -- a time stamp
22 on it. It's the text ending 046, if we can highlight that.
23 And on this, it has you saying to Mr. Pack, "I'm completely
24 out of ideas," and the time stamp is at 10:02 p.m. So is
25 that time stamp correct as a matter of Central Time?

1 **A.** No, I don't believe so.

2 **Q.** Okay. Now, there are three texts that you actually
3 appear to have written within the same minute that is -- that
4 is denominated here as 10:02. Do you see that?

5 **A.** I do.

6 **Q.** And it first says, "I'm completely out of ideas.
7 So . . . And if we show full network results . . . no
8 bueno."

9 Okay. Without getting into the details of the
10 conversation that you were having with counsel at this -- at
11 this time, what is the subject of those comments? What are
12 you referring to when you -- when you are making those
13 comments?

14 **A.** As we were having a discussion, I recall in this
15 particular call, we were being asked to create one or more
16 sort of counterfactuals, or but-for cases, as you described
17 them, and I was sort of frustrated with that request and
18 didn't understand sort of the -- some of the asks that were
19 being made to be legitimate or relevant for the work that I
20 was doing at the time.

21 **Q.** Had you -- without getting into exactly what you said,
22 had you expressed to the people on the call any of your
23 frustrations about that?

24 **A.** Yes, many times.

25 **Q.** Okay. Does the -- does the text that says "I'm

1 completely out of ideas" have any relationship to what you
2 had been saying on the call in terms of expressing your
3 frustration?

4 **A.** Yes. I recall explaining several different reasons why I
5 didn't want to do what was being asked and was being told to
6 do it anyway, and that's what that text I believe was in
7 reference to, "I'm out of ideas."

8 **Q.** There's a phrase, the third one that's gotten so much
9 attention about -- it says, "If we show full network
10 results . . . no bueno" -- "no bueno," not good, of course.
11 What was the subject that was being discussed on the call
12 that you were saying is not good?

13 **A.** This was, I believe, in reference to what was being asked
14 of us from a counterfactual measure, not only for what we
15 were being asked to create, but certainly the significance or
16 the amount of work that would be required to do so.

17 **Q.** Okay. Thank you, sir.

18 Now, if we go on a couple texts later, the one
19 that's denominated -- that ends with the Bates 051, you once
20 again have two texts within the same minute. The first one
21 says, "Based on what I'm hearing, if I was DOJ, I could kill
22 any deal . . . any deal." And then the next one reads, "No
23 deal positive."

24 What did you mean by "no deal positive"?

25 **A.** Again, this is frustration and certainly a lot of

1 sarcasm, but my basic premise was if this is how or the
2 counterfactual that we were being -- we were talking about
3 and was being explained as to why we needed to run it, this
4 is how, like, the deals in general were going to be
5 considered. I didn't see or didn't make sense to me how any
6 deal of any magnitude or -- could be possibly approved.

7 **Q.** So are any of these texts between you and Mr. Pack
8 related to the business case for the NEA?

9 **A.** No.

10 **Q.** Is it -- in writing these texts, are you at any point
11 addressing whether the NEA would have business or consumer
12 benefits?

13 **A.** No. I'm addressing the request that was -- that was
14 being asked of us at the time.

15 **Q.** Okay. Thank you, sir. We can move on from that.

16 So let's just go forward in time a bit. The clean
17 team -- it's established this structure, the NEA, and
18 reported up to management. In terms of your own involvement
19 in the NEA, what came next?

20 **A.** After we had shared what we believed was going to be the
21 business case for the NEA, we then moved into creating
22 agreements with JetBlue, trying to get to an agreement for
23 the partnership, as well as working further in the regulatory
24 case, which I believe was what's -- with the DOT next.

25 **Q.** Right. So we've heard testimony in this case about the

1 agreement that JetBlue and American Airlines entered into
2 with the Department of Transportation in January 2021. Did
3 you have any responsibilities related to that agreement?

4 **A.** I would have supported Anmol in the analytical sort of
5 work required for that agreement, but not direct negotiation.

6 **Q.** Okay. And was part of that analytical work regarding the
7 growth commitment?

8 **A.** Yes, it was.

9 **Q.** Okay. So I think you prepared a set of demonstratives to
10 talk about the DOT growth commitments; is that right?

11 **A.** Yes. Yes, I have.

12 **Q.** Go ahead and -- we'll pull that up here. Let me just ask
13 you to begin by just providing the Court with an overview of
14 what you've done on this chart.

15 **A.** Yes. So this is a chart that sort of explains sort of
16 the growth commitment as we agreed to it with the DOT and
17 sort of it's net results for the partnership.

18 **Q.** Okay. Let's go down. First of all, the vertical axis
19 there, it's 2020 flow actual, et cetera. Can you explain
20 what each of those entries in that column mean?

21 **A.** Yeah, so that first column is the seats for JFK and
22 LaGuardia as reported from the DOT 200 database. So the 2020
23 flown actuals is the seat count for AA and JetBlue at JFK and
24 LaGuardia. Same for 2019. That's what we actually flew in
25 2019.

1 And then as you go down further, we start talking
2 about the baselines and the adjustments to the baseline.

3 **Q.** So hybrid, it says "2018/2019"? What is that and where
4 did it come from?

5 **A.** The hybrid model or the hybrid baseline was a result of
6 the discussion with the DOT addressing some concerns I
7 believe that they had related to the slot waivers that were
8 in place in JFK in 2019 for American Airlines, and so the
9 hybrid model was using 2019 for JetBlue and JFK and
10 LaGuardia, 2019 for American and LaGuardia, but then using
11 2018 for American and JFK.

12 And what you see there is what that new baseline is
13 and it's sort of -- its effect on what we had planned on with
14 the growth commitments, which was a 2019 baseline, the real
15 flown.

16 **Q.** Okay. So that results in a figure here of 37.8 million
17 seats, right?

18 **A.** Yes.

19 **Q.** Okay. And then there's -- it looks like there's a
20 deduction that occurs in the next column. It says, "less
21 AA/B6 slots at 2019-gauge." What does that mean?

22 **A.** Yeah, so that -- as part of the agreement with the DOT,
23 we were to divest seven slot pairs or 14 slots. And this is
24 the -- sort of the credit we were given for those
25 divestitures in the model, which was at, I believe, AA's

1 minimum gauge at that time and JetBlue's minimum gauge at
2 that time.

3 **Q.** Okay. And so then that results in the yellow row in the
4 new baseline of roughly 37.5 million seats, right?

5 **A.** That's correct.

6 **Q.** Okay. And in the next -- I guess it would be the third
7 column of the chart, it says "baseline versus 2019." What
8 are you showing there?

9 **A.** Yeah, so the next columns over represent the growth
10 commitment with the DOT, which was 105 percent in 2022 --

11 **Q.** I'm sorry. I'm talking about the -- one of lines called
12 "Baseline Versus 2019" --

13 THE COURT: The column.

14 THE WITNESS: Oh, I'm sorry. Yes. So that second
15 column there -- I apologize -- is just the net effective
16 growth relative to our baseline.

17 So for the hybrid model, the 102.4 percent is
18 essentially saying that what we had planned on or actually
19 flown in 2019, the new baseline was, you know, 102.4 percent
20 or 2.4 percent larger than that.

21 MR. WALL: Okay. Understand. Okay. So --

22 THE COURT: Let me -- in Column 1, 2019 flown was
23 what was actually flown by JetBlue and American at JFK and
24 LaGuardia.

25 THE WITNESS: That's correct.

1 THE COURT: And then the hybrid is, basically,
2 since there were slot waivers, presumably DOT was saying
3 you -- there's really not a fair basis to do the slot
4 waivers, so we're going to up you to -- we're going to look
5 at 2018 when you had no slot waivers, and that's why that
6 hybrid number is higher?

7 THE WITNESS: That's correct.

8 THE COURT: And then the reduction is what would
9 those slots fly -- what did they fly in 2019 at your minimum
10 gauge?

11 THE WITNESS: That's -- that's, essentially,
12 correct.

13 THE COURT: Essentially, so --

14 MR. WALL: The seven divested.

15 THE WITNESS: Yeah. The ones that we were getting
16 rid of, we needed a credit for on this line.

17 THE COURT: Right. So, then, that's why the new
18 baseline -- then, as it turns out, the new baseline was
19 higher than the actual 2019 baseline because that has to do
20 with the difference in the waivers and the ones you're giving
21 up?

22 THE WITNESS: Yeah, and what's -- that's right.

23 THE COURT: Okay. Got it. Go ahead.

24 BY MR. WALL:

25 Q. Okay. So now we go into the next sort of two columns

1 that are sort of in the middle, 2022 at 105 percent and 2022
2 versus 2019. What are you showing there?

3 **A.** So in the -- the -- again, it's the 5 percent commitment
4 based on the 2019 flown actuals, and then the net effect of
5 the hybrid baseline, which is the 107.5 percent. And then
6 that less the reduction in slots, which is the new baseline
7 of 106.7 percent.

8 So what we had originally, I think, talked about
9 was the 105 percent, that the effective increase relative to
10 19 was 107.5 percent. And then if you net out the slots that
11 we were -- we were -- we were divesting, it's 106.7 percent.

12 **Q.** And the DOT has an interim growth commitment of 5 percent
13 in 2022?

14 **A.** That's correct.

15 **Q.** Okay. And so then the next two columns that sort of
16 begin 2023/2024 --

17 **THE COURT:** So wait. So the hybrid -- the plus you
18 get in the hybrid in the first column -- in other words, the
19 difference between the flown actual and the hybrid is a plus
20 based on the difference between the slots waivers and what
21 you did the year before at JFK?

22 **THE WITNESS:** That's right. It's just the --

23 **THE COURT:** So that year plus just gets added all
24 the way across.

25 **THE WITNESS:** Yeah. And it's because it's an

1 increase of the baseline, as you add a percent increase, it
2 gets a little bit bigger as you get up.

3 THE COURT: Right. And then -- I see. Okay. And
4 it's a slightly smaller plot because of the net average and
5 then just add it all way across?

6 THE WITNESS: That's correct.

7 THE COURT: Okay. Go ahead.

8 BY MR. WALL:

9 Q. Okay. All right. So the DOT agreement then sets
10 110 percent baseline for a later period, right?

11 A. Yes, for 2024.

12 Q. And that's what you're dealing with here in these next
13 two columns?

14 A. That's correct.

15 Q. Okay. So explain that.

16 A. So the 105 percent stepped up -- in 2022 -- stepped up to
17 110 percent in 2023 and then was maintained in 2024 as well,
18 so 110 percent targets in '23 and 2024. And, again, the
19 second column in that section is the net effect of growth
20 versus 2019.

21 Q. Okay. Actually, I think I misspoke. So the -- the
22 10 percent, that's the growth that you have to hit to avoid
23 any further slot waivers?

24 A. That's correct.

25 Q. Okay. And then -- so the 15 percent that is the growth

1 that you have to hit to keep all ten of the slots that are at
2 issue?

3 **A.** The 15 percent is the growth commitment for 2025.

4 **Q.** Right.

5 **A.** So it went 5, 10, 10, 15.

6 **Q.** Okay. So what is that then show about the overall growth
7 commitment that you're taking on here?

8 **A.** So the growth commitment prior to the divestiture of
9 slots was effectively 117.7 percent of what we actually flew
10 in 2019 and then adjusted for -- for the seven slot
11 divestitures would have been 116.8 percent of what we flew in
12 2019 in 2025, the requirement to avoid any other conditional
13 divestitures by 2025.

14 **Q.** Great. Thank you, sir.

15 Let's go on to the next demonstrative. This is
16 entitled "DOT required capacity increases" bar chart. What
17 are you showing here?

18 **A.** Yeah, so this is 2020 and 2021 actual seats, and then
19 what we had committed to growing to, in 2022, 2023, 2024, and
20 2025.

21 **Q.** Okay. And so you're -- you're dating the agreement there
22 at January 10, 2021, which is -- that's a period of COVID
23 recovery, right?

24 **A.** That's right. It was a very aggressive, or for me at
25 least, a pretty scary commitment to grow that fast that

1 quickly in the middle of COVID.

2 **Q.** And what is that red dotted line?

3 **A.** I think that line represents, you know, the highest sort
4 of seats flown between the two carriers in JFK and LaGuardia
5 in the past ten years. So we were committing in 2022 to
6 exceed what we had done historically and then growing from
7 there.

8 **Q.** Thank you, sir.

9 So let's go to the next chart. It's called
10 required growth -- seats 2018/2019 hybrid. What are you
11 doing here?

12 **A.** This charts a chart that sort of explains our model, that
13 explains what happens if you -- to calculate what would
14 happen if you didn't meet your commitments or to explain
15 what's required to meet your commitments.

16 **Q.** So just take us through the math that's reflected here
17 over the --

18 **A.** Yeah.

19 **Q.** -- the different years.

20 **A.** I used the letters on the right-hand side of the first
21 column there to sort of point out the calculations. So the
22 first column is the hybrid baseline. It's the same baseline
23 you saw earlier, and it's the number of slots we had between
24 the two carriers, or what I believe we had between the two
25 carriers at the time. And then if you go down where it says,

1 "D = A + C/B" that's the seat per slot pair. So if you
2 divide the seats by the total slot sheet, it's seats per slot
3 pair.

4 If you move to the right, 2022 was our first
5 commitment. And what I'm showing there is the seat growth
6 commitment and the total slots by which you would evaluate
7 that other, which remove the seven slots that were
8 divested -- that were divested as part of the agreement, plus
9 an additional -- at the time we were planning had just set
10 aside six slots for JetBlue transatlantic flying. Basically,
11 as a -- as a placeholder, the growth that JetBlue had in the
12 transatlantic which required them to use slots at JFK in this
13 instance was -- would not count towards our growth commitment
14 as per our agreement with the DOT.

15 So those slots were removed from the calculation,
16 so the 452 goes to 439; and the difference there is the 13
17 slots, the seven divested plus the six at the time we had set
18 aside for JetBlue transatlantic flying.

19 In this column at the bottom where it says, "slot
20 pair divestitures" says "zero" because what I'm reflecting is
21 that we meet the 5 percent growth in 2022.

22 THE COURT: Is the target December 31st,
23 January 1st of 2022, or somewhere in between?

24 THE WITNESS: It's full year, so it's full year
25 actual flown. You measure it in, I think, January, the very

1 beginning of the next year, and determine what the result
2 was.

3 THE COURT: I see. Okay.

4 BY MR. WALL:

5 Q. Okay. So what are you showing there in that -- in that
6 column that has the yellow in the top row?

7 A. Yeah, so I'm giving an example of what happens if you
8 don't perform to your commitment. So this chart illustrates
9 making the 5 percent commitment in 2022 and the 10 percent
10 commitment in both 2023 and 2024, and then the yellow column
11 there that's highlighted shows what would happen if we didn't
12 make it all the way to 15 percent in 2025.

13 Q. 15 percent of above which baseline?

14 A. This is the true seat commitment. So this would be the
15 15 percent of the adjusted baseline.

16 Q. Right.

17 A. So this is the nominal seats at the top; it's the actual
18 commitment.

19 And what I'm showing here is that, you know, let's
20 say we grew by 12 percent instead of 15 percent, which would
21 be a pretty large number, what would happen here is if you go
22 down to column -- which says F, which is equals E minus
23 seats, the second to bottom row, the way that the commitment
24 works is you take the number of seats you missed by, so this
25 was a 1.1 million, which reflects 12 percent growth instead

1 of 15 percent growth, and you would then divide that by D,
2 which is seats per slot pair that you actually flew, and that
3 would determine the number of conditional slots you would
4 have to divest because of your miss.

5 And in this instance, just growing at 12 percent,
6 instead of 15 percent, would have reflected divesting all the
7 slots that we had agreed to divest all 10 slot pairs.

8 **Q.** So you could actually have 12 percent growth above an
9 adjusted baseline and you'd still lose all 10?

10 **A.** That's correct.

11 THE COURT: Explain that formula again.

12 THE WITNESS: Yeah, so you basically look at what
13 you committed to grow by in terms of total seats. So --

14 THE COURT: 5.6 million here?

15 THE WITNESS: Yes, that's correct.

16 THE COURT: All right.

17 THE WITNESS: And you say I'm simulating, if you
18 look in the first row there, it says 42 million. If you look
19 to the right, 43 million reflects the 5.6. The 42 million is
20 saying 12 percent growth instead of 15 percent growth.

21 THE COURT: All right.

22 THE WITNESS: That delta is in the lowest, the
23 second to bottom column. That's missing our growth movement
24 by 1.1 million seats.

25 THE COURT: Right.

1 THE WITNESS: And then to determine how many slots
2 you would divest, you take that 1.1 million seats, and you
3 divide it by what you -- how many seats you actually flew per
4 slot, which is the 95,694, and that determines how many slots
5 you would divest.

6 The math is not perfect. I think it actually comes
7 out to more than 10, closer to 12, but the 10 was the
8 agreement for the conditional slot divestitures.

9 THE COURT: Okay. Got it.

10 BY MR. WALL:

11 **Q.** Okay. Thank you. We can put that down.

12 So from your perspective, how would you describe
13 the pressure to grow that that commitment puts on American?

14 **A.** It was --

15 MR. BERMANN: Objection. Leading.

16 THE COURT: Overruled.

17 THE WITNESS: It was quite aggressive in my
18 opinion. I mean, in the middle of COVID, growing to
19 something in just a year later -- I mean, we knew there was
20 no way we could get there in 2021 regardless of recovery
21 period. But being 5 percent greater than you were in 2019
22 and then adjusting that to 7, almost 7½ percent was an
23 incredible growth commitment. And then, you know,
24 maintaining that out into the future to be something that's
25 closer to, like, 15 to 17 percent growth was really high.

1 That was my opinion.

2 BY MR. WALL:

3 **Q.** So how are you doing in terms of progressing towards
4 meeting those growth commitments?

5 **A.** I haven't looked at the exact numbers, but I understand
6 we're on track to make our 2022 commitments.

7 **Q.** Okay. New subject matter. Thank you.

8 We've heard a lot in the trial about seamlessness.
9 Are you involved in the seamlessness initiatives at American
10 Airlines?

11 **A.** I am.

12 **Q.** Okay. Just generally, what is your role and what has
13 been your role and responsibilities with respect to
14 seamlessness?

15 **A.** Yes, so my job, historically and through the time period
16 here when we were rolling out and launching the NEA, I was
17 responsible for, you know, the codeshare implementation and
18 then making sure that we move forward with many of the key
19 categories on seamlessness, working with JetBlue to help
20 prioritize the work and making sure it got done.

21 **Q.** Thank you, sir.

22 So I want to pull up Plaintiffs' Exhibit 369, which
23 the Court has seen before in Mr. Raja's testimony. You're
24 familiar with this presentation, are you, sir?

25 **A.** I am.

1 **Q.** Okay. And let's navigate to slide 61, please. And I
2 think that we talked with Mr. Raja a little bit about this,
3 but just to orient our discussion, can you explain what this
4 chart is indicating and its relevance to seamlessness?

5 **A.** Yes, so this is looking sort of holistically at the
6 customer journey, the end-to-end journey. And the point of
7 seamlessness is we need to be able to deliver a cohesive, you
8 know, experience across the entire journey, not just on one
9 individual stage, not just when you fly or when you shop, but
10 holistically across the journey. And it's broken into these
11 separate categories that we consider and look at while we're
12 evaluating and implementing seamlessness.

13 **Q.** And are those, in fact, categories that you have
14 considered with respect to the NEA?

15 **A.** Yes.

16 **Q.** Okay. Let's go to slide 62. In this slide, which I
17 don't think we've seen in court before, we have a specific
18 example, some examples of seamlessness. I want to direct
19 your attention to the middle box that has the JetBlue logo on
20 there. And you see that there's an icon, picture, whatever
21 you want to call it, of a bus there, right?

22 **A.** Yes.

23 **Q.** We've all heard about the bus. Did you have something to
24 do with the bus?

25 **A.** Yes. No, we did work on the work to get the bus off the

1 ground between Terminal 5 and Terminal 8.

2 **Q.** How did that come about?

3 **A.** Well, the bus was a solution to something. We knew that
4 AA and JetBlue in JFK could never really live in the same
5 terminal. There's too many slots and too many departures and
6 not enough gates in one given terminal, so connecting
7 customers between Terminal 5 and Terminal 8 was going to be a
8 challenge that we needed to solve.

9 The bus is a great example of that. This really
10 came to life, I think, when we had a walk-through of the --
11 JFK with -- at one of our steering committee meetings with
12 Robert and Joanna.

13 **Q.** Robert Isom and Joanna --

14 **A.** -- Geraghty, JetBlue's president. And we looked at the
15 customer experience and we had to go out and walk around and
16 then we looked at what a solution might be which is a sterile
17 side secure bus connector.

18 **Q.** What do you mean by "sterile side"?

19 **A.** Make sure that customers don't have to exit security and
20 come back. Any time we can prevent that, that's a much
21 better customer experience than having to go out and then go
22 back through security and creates less variability, things
23 like that, in the time it takes.

24 And so we went out and we understood, I think, in
25 late March, early April, what it would take to get the bus in

1 place, and it sort of became a requirement to go do so.

2 **Q.** And you've commissioned a video of that bus solution,
3 right?

4 **A.** Yes.

5 MR. WALL: Your Honor, we have a video. It's
6 Defendants' Exhibit 956. It's -- the Department of Justice
7 has had a look at it already. It's not admitted into
8 evidence. I would move it into evidence. There are no
9 objections.

10 THE COURT: All right. No objections, it's
11 admitted.

12 (Defendants' Exhibit DX956 admitted into evidence.)

13 BY MR. WALL:

14 **Q.** Okay. What I would like you to do if you could for me
15 is, as we play the video, you get to be the color commentator
16 on the game. Just go ahead and narrate for us what -- what's
17 being shown in the two different sides of the video.

18 Go ahead, please.

19 **A.** Okay. I'll do my best, as it moves pretty quickly, but
20 it's a side by side with the pre-NEA experience on the
21 left-hand side, which is the AirTrain, and post on the right.
22 And here the same person is exiting Gate 20 on Terminal 5,
23 the JetBlue side, and here they're going down towards the
24 security exit.

25 On the left-hand side, they'll actuality exit

1 security, which will be towards the AirTrain. On the
2 right-hand side, the NEA experience, you go back up those
3 steps and to the right. It takes about four minutes to get
4 there to the shuttle bus. On the left, you're walking
5 through baggage claim over to the AirTrain. On the right,
6 you're going to be riding on the bus, which you'll see here
7 as this goes through.

8 The bus goes around Terminal 5 all the way out and
9 around, as you're going watch here, and then parks at
10 Terminal 8 at the American Airlines side. And on the left,
11 we're walking here toward the AirTrain. And the AirTrain
12 does this outside of the terminal. So we've exited security
13 and they're now getting on the AirTrain. The right-hand
14 side, the bus is now going across the airport.

15 And we'll add that four-minute time block that you
16 saw at the end. We wanted to keep the cameras synced up here
17 on the counter.

18 So now they're exiting the bus on the right-hand
19 and exiting the AirTrain on the left-hand side. Of course,
20 on the bus, on the right-hand side, you're on the secure
21 side. So they're walking to the gate on the AA side.

22 And on the right -- the left-hand side, after using
23 the AirTrain, you then come to security. And then depending
24 on how long the security wait is -- this average from the
25 website here is 22 minutes. You then get through security

1 and now do that same journey where you walk toward the gate
2 and are seated.

3 THE COURT: So the biggest difference in time is
4 eliminating security?

5 THE WITNESS: Yeah, and it's a lot less walking, of
6 course, right? And so any time you can sort of reduce that
7 time -- it's also reduces variability across that as well.
8 Where.

9 THE COURT: Interesting.

10 BY MR. WALL:

11 **Q.** Thank you, sir.

12 Okay. I want to turn next to another demonstrative
13 that you've put together with respect to seamlessness. This
14 has to do with some of the various tasks you've taken on as
15 far as the seamlessness initiatives of the NEA; is that
16 correct?

17 **A.** That's correct.

18 MR. WALL: Why don't we pull these up here. And
19 before -- let's pull up the first one. Okay. Before we get
20 started here, I just --

21 Andy, if you can just cycle through the next four
22 together just to show that what's going on --

23 And, Your Honor, this is one long timeline. If you
24 look at the bottom as we cycle through things, you're going
25 to see a succession of periods of time. So -- they don't

1 make a screen this wide.

2 All right. So you can go back, Andy, to the first
3 one, which is in May 2020.

4 BY MR. WALL:

5 **Q.** And the first question is, could you just kind of tell us
6 about the construction of this timeline, what you've done and
7 what these different color categories with the dots at the
8 top of the chart are?

9 **A.** Yeah. So this is, as you just described, the timeline of
10 what I call or what we have here are some of the key seamless
11 events that have occurred as part of implementing the NEA and
12 seamlessness within the NEA. We've tried to categorize them
13 into different sort of groups that are responsible for the
14 categories. So codesharing availability is separate from
15 customer notifications, separate from, like, the digital
16 customer experience that's CX and immersion, or how we
17 provide the view of the product to the customer, which is
18 separate from our marketing and external communications.

19 There's a category in here for what we're doing for
20 our operations teams at the airport and our corporate real
21 estate teams there, a category for sales, and then one for
22 status member benefits, the things that the customers really
23 care about, their benefits with the respective airlines.

24 **Q.** Okay. Thank you.

25 Now, I certainly don't want to go through each and

1 every one of these, but on this first page, which is the
2 period from May 2021 to September 2021, can you highlight for
3 the Court some of the main milestones in achieving
4 seamlessness?

5 **A.** Yes. Thanks. The first thing I'd point out is --
6 perhaps, it's not on here -- which is we launched a codeshare
7 in February of 2021. That was the codeshare launch. And so
8 coming up to the summer, we had worked very quickly on a
9 couple of things.

10 One, we knew that we were going to be launching the
11 two new routes that were part of the NEA: JFK Tel Aviv and
12 JFK Athens. And we had spent a lot of time and effort on
13 making sure that those routes not only were being sold by
14 both carriers, which is where you see codeshare phase 2
15 implementation, but that we were able to communicate with the
16 customers and connect those passengers who were going to be
17 connecting onto those flights, you know, as -- as well as
18 possible.

19 So prior to the bus in May, we had invested in
20 way-finders, which are -- and signage so people and signs to
21 help get customers from Terminal 5 to Terminal 8 and vice
22 versa. And then once we, obviously, launched the bus in
23 June, that would create a better -- a better proposition for
24 customers.

25 Also, in May, one of the first things we rolled out

1 for the NEA is the all important ability for our customers to
2 accrue their points and miles. So if you were flying on a
3 JetBlue flight, regardless of whether or not you booked it
4 through American, or if you booked it through JetBlue and you
5 wanted to earn advantage miles, you were able to do that very
6 early on. It's important to our customers that when they're
7 traveling with our partners, that they can earn their miles
8 and vice versa for JetBlue; when their customers are
9 traveling on American, they can earn their points.

10 As we move through the summer, you'll see a lot of
11 these bars and indicators are about communicating with the
12 customer. We did everything we could. We were sending
13 ad hoc e-mails to make sure that -- a lot of our customers
14 here hadn't been traveling through COVID, and -- you know, so
15 realizing that JetBlue's in Terminal 5 at JFK instead of
16 Terminal 8 is not something that -- you know, we felt like we
17 could help by sending some ad hoc e-mails to make sure they
18 went to the right terminals for their flights.

19 We also started exposing both the record locaters,
20 we call them "PNRs," so you could understand what the
21 confirmation code was and manage your reservation with the
22 respective airline through that confirmation --

23 **Q.** That's what's above July of 2021, where it says "AA PNR
24 and B6 e-mails"?

25 **A.** That's right. And then, as you go down, the check-in

1 e-mails, as well. That's correct, Dan.

2 We had established in July a data-sharing platform.
3 Some reporting for our operations team in JFK has been -- is
4 being rolled out in Boston and LaGuardia as well to notify
5 inbound connections to the outbound flights to make sure that
6 both teams knew how many customers were coming on, how many
7 bags needed to be transferred, et cetera, and trying to make
8 sure that we were making that process move as smoothly as
9 possible.

10 And then you'll see on the right-hand side of the
11 chart if I skip -- skip over a few, you know, we were
12 starting to do everything we could in terms of boarding
13 passes, in terms of check-in moving from e-mails, PNR
14 visibility, to deep links in the app, deep links on the
15 dot-com, etc.

16 **Q.** Okay. Let's go to the --

17 THE COURT: Before you do, just -- so this time
18 frame, there's two -- from -- two new routes added one JFK to
19 Tel Aviv, one JFK to Athens.

20 THE WITNESS: They're two long-haul routes that
21 we're talking about.

22 THE COURT: Right. Long-haul routes. Right. And
23 those -- that means that there wasn't, prior to this,
24 American Airlines service to those two cities from JFK?

25 THE WITNESS: I don't believe so, no.

1 THE COURT: Okay. And does that mean there was no
2 service by American Airlines from anywhere in the US to those
3 cities?

4 THE WITNESS: I -- I do not recall if we ever
5 served Athens and I don't recall -- I believe we served
6 Tel Aviv perhaps from Philly or from Miami. We do from Miami
7 now.

8 THE COURT: Okay. Thanks.
9 Go ahead.

10 BY MR. WALL:

11 **Q.** You had something you wanted to add, or are you going on
12 to the next slide?

13 **A.** No. I just wanted to point out these were -- these
14 were -- the reason they're on here is because they're big new
15 route launches, and we wanted to make sure we had codeshare
16 and connectivity.

17 THE COURT: Yes. No, I understand. Definitely
18 routes are added, and that's part of the NEA, is to add these
19 routes.

20 THE WITNESS: Yeah.

21 THE COURT: Yeah.

22 BY MR. WALL:

23 **Q.** Okay. So the second in the sequence is October 2021 to
24 February 2022. What are some of the notable seamlessness
25 accomplishments during that period?

1 **A.** Yeah. So a lot of the work really from the beginning of
2 the NEA, but from the -- you know, heavy work over the summer
3 to get benefits out to customers, the next big thing here was
4 to make -- making sure that JetBlue Mosaic customers and
5 American Airlines Advantage customers received their benefits
6 while traveling, so we got the points and the miles thing
7 figured out, but we needed to make sure we were delivering
8 customers their -- you know, their priority access screening,
9 their bag tags, the ability to board the airplane with a
10 priority, et cetera. And this had been accomplished with
11 other partners through what we would call the Oneworld rails
12 or --

13 **Q.** What?

14 **A.** Oneworld rails.

15 **Q.** Rails?

16 **A.** It's a term that I won't admit to know exactly what it
17 means, but the idea is, you know, in Oneworld, we have
18 technology sort of to take care of the entirety of Oneworld.
19 JetBlue is not in Oneworld. So these were custom sort of
20 solutions to be able to create this ability for customers to
21 receive their benefits while traveling on the partner
22 airline.

23 We had also --

24 THE COURT: This doesn't -- the NEA doesn't put
25 them in Oneworld?

1 THE WITNESS: No.

2 THE COURT: Do I have a copy of this?

3 THE WITNESS: I'm sorry?

4 THE COURT: Do I have a copy of this?

5 MR. WALL: I guess not, but we -- as of this
6 moment, people are working on it.

7 THE COURT: Okay. I think it would be helpful. As
8 to all of the demonstratives, when used with the witness,
9 generally, I think some of them already have, but I think
10 it's helpful for me to have them.

11 THE WITNESS: So the other thing we did is we
12 started to roll the codeshare markets into our -- into
13 American's unilateral corporate deals to make sure that our
14 corporate customers had access to the NEA, as well, with
15 their programs in place.

16 And then the second reciprocal benefit to accruing
17 miles was the ability to redeem miles, and that was done in
18 the fourth quarter as well in 2021.

19 BY MR. WALL:

20 **Q.** Okay. If we go on to the next one, and now the period is
21 February 2022, we're into this year, through June. What are
22 some of the significant seamlessness accomplishments during
23 that period of time?

24 **A.** Yeah. So you'll see this again, continuing to roll out
25 codeshare throughout this process, as more markets came

1 online and there was capability to do so and regulatory
2 approval for it, but we continued to try and move things and
3 we were doing ad hoc e-mails up into either AA.com or
4 JetBlue.com or to the apps. And we rolled out what we're
5 calling I guess phase 1, 1B, and phase 2 status benefits
6 here, which is beyond just, you know, your priority access
7 and your priority screening, but having access to extra leg
8 room seats, the ability to do same-day flight changes you'll
9 see go throughout here, the ability to move from flight to
10 flight which is particularly important to our customers in
11 the high frequency markets, and had changed some of our other
12 policies at AA.

13 So, for instance, we were now allowing Admiral's
14 Club members traveling on a JetBlue ticket to access the
15 lounge, which we hadn't been doing before, and making sure
16 that we were syncing up our communications with JetBlue, and
17 then you'll see in the next slide, holistically throughout
18 all of our partners, to make sure that we knew when we were
19 talking to customers and they knew when they were talking to
20 customers, making sure customers get one e-mail and it was
21 consistent.

22 **Q.** Okay. And then finally the last slide is the period from
23 May 2022 up to September 2022. What have been the
24 significant accomplishments during this period?

25 **A.** Well, you know, one of the main ones is, as JetBlue has

1 been, I believe, rewriting or implementing a brand-new
2 website, one of the key things that they had done in there is
3 made it possible to sell American Airlines business class and
4 first class.

5 On the website, they hadn't historically had a need
6 to say anything other than Mint, and we needed a column that
7 would set business and first so they could expose those fares
8 or those opportunities for their customers. So they did that
9 this summer.

10 And then as you move to the right --

11 THE COURT: That's to sell AA premium?

12 THE WITNESS: That's correct.

13 And then as you move to the right, the Boston
14 secure corridor at Boston between B and C, the ability,
15 again, to walk inside of security from the American gates to
16 JetBlue gates, as well as the full code location, which isn't
17 directly called out here, of JetBlue into LaGuardia at
18 Terminal B occurred. And I think just recently, and perhaps
19 in the past couple of weeks, we started to sell connections
20 in those airports, as well.

21 BY MR. WALL:

22 **Q.** And the line that says "codeshare expansion B6/*AA on
23 DOH/EZE," what does that mean?

24 **A.** Yeah. So that's JetBlue adding codeshare to some more of
25 the international routes that are coming online as part of

1 the NEA. So these were routes that either hadn't launched or
2 we didn't have regulatory approval and we now do and we're
3 now adding codeshare for those markets.

4 **Q.** Okay. Thank you, sir.

5 So do you make efforts to track how your
6 partnerships are performing with respect to seamlessness and
7 other metrics?

8 **A.** Yes.

9 **Q.** And what form does that performance tracking take?

10 **A.** These -- the form would be in monthly score cards that
11 we -- that we produce for partnerships in general and then
12 key partnerships like this one, as well?

13 **Q.** So the NEA is part of a broader score card?

14 **A.** That's correct.

15 **Q.** Okay. And how long have you been tracking the NEA's
16 performance?

17 **A.** We've been tracking some metrics from the very beginning,
18 and then as the score card evolves, we add those metrics in,
19 as well, for the NEA.

20 **Q.** Okay. Let's take a look at one of those score cards.

21 MR. WALL: Your Honor, we're going to pull up
22 Defendants' Exhibit 149. This is a document that has been
23 sealed in full and it should not be published. It has been
24 admitted into evidence. We're going to put up -- the -- the
25 font on this is extremely small and so we're going to put it

1 up on the screens, but we would ask that it not be published
2 to --

3 THE COURT: Put it on the lawyers, witness, and the
4 court, but not the public or the Zoom.

5 MR. WALL: Right.

6 THE COURT: Can we do that, Kellyann?

7 THE DEPUTY CLERK: Yes.

8 THE COURT: Okay.

9 BY MR. WALL:

10 Q. And now, Mr. Schweinzger, because of this, we have to
11 have a -- a bit of a cramped conversation about this where I
12 may ask you some questions just to identify what our data
13 point is and verify it, but don't say it out loud.

14 A. Okay.

15 Q. Okay? Good. Okay.

16 So first of all, do you recognize this document
17 that is been marked as DX149?

18 A. I do.

19 Q. And just what is it?

20 A. This is a -- what's referred to internally as the F4
21 meeting, but what it is is the -- sort of our alliances and
22 partnerships and seamless partnerships score card, the
23 monthly report that we provide.

24 Q. Okay. And, again, this is -- this will have information
25 about lots of different airline partners, that's correct, not

1 just NEA?

2 **A.** That's correct.

3 **Q.** So let's navigate to page 31 and we've been discussing
4 seamlessness, so I'll begin with that. On the top right-hand
5 corner that's -- there are some rows under a heading that's
6 called "customer journeys." Do you see that?

7 **A.** I do.

8 **Q.** And what does customer journeys mean and what's -- what
9 is shown below?

10 **A.** So customer journeys is what you showed sort of in
11 that -- in the previous partnerships, 2.0 document, is our
12 sort of measure or as you're seeing here, seamless score for
13 American, customers traveling on a partner and for partners'
14 customers traveling on American, which are the next two rows.

15 That score is a combination of -- I think it's 250
16 plus different touch points on the journey, that we ran a
17 survey for and sort of created seamless scores that we can
18 evaluate not only the NEA, but all partners consistently on
19 our path to seamlessness.

20 **Q.** Okay. And you can see that there's two different --
21 there's a distinction that's made between AA on partner and
22 then partner on AA. What's the point of that?

23 **A.** Well, as, you know, for various reasons -- technology
24 agreements, et cetera -- you want to measure both how our
25 customers are being treated on partner airlines and then,

1 reciprocally, how our partners' customers are being treated
2 on American Airlines. And we measure both scores so that we
3 can keep track of how we're doing.

4 **Q.** So in the grand scheme of things, what's a good grade,
5 what's a good seamless score?

6 **A.** I -- you know, anywhere in the, I think, 60 to 65 percent
7 range would be pretty strong. It starts to get incrementally
8 more difficult after that. I think -- perhaps our -- one of
9 our longer standing partners is at this point in time in the
10 70, 71, low 70s.

11 **Q.** Okay. So what we're seeing in the column that's labeled
12 "Q2 22" are the seamlessness scores for, respectively,
13 American Airlines on JetBlue and JetBlue on American?

14 **A.** That's correct.

15 **Q.** Okay. Thank you. Thank you, sir.

16 Now, I think that, partly to deal with some of
17 these confidentiality issues, you've prepared a demonstrative
18 to summarize the NEA progress on seamlessness; is that right?

19 **A.** That's right.

20 **Q.** Okay. Why don't we pull the document down and pull that
21 up. We'll come back for the document a little bit later.

22 What is this? What are you showing here?

23 **A.** This is the scores we just looked at trended over time
24 for the -- for our partnership with JetBlue or the NEA
25 seamlessness scores.

1 **Q.** And is this based upon a standard business methodology
2 that you have for all partnerships?

3 **A.** That's correct. We have this score for all of our
4 partners just like this -- for many of them, I should say,
5 not every last one of them, but for nearly all of them.

6 **Q.** And so how do you read it? What do you see there with
7 the blue line and with the dotted red line?

8 **A.** Yeah. So the dark blue or the solid line is, as we
9 looked at in the last column, American on JetBlue or
10 American's customers traveling on JetBlue. And the dotted
11 line is JetBlue customers traveling on American.

12 And it just shows the ramp-up and progress, to
13 date, of implementing seamless initiatives. And then it
14 shows, beyond that, where we think where we'll be or where we
15 have a line of sight to, and then what our plan is for 2023
16 or at least through mid year of 2023.

17 **Q.** So it would appear from this that your target for
18 seamlessness in the NEA is somewhere up in the mid 80s. Am I
19 reading that correctly?

20 **A.** Yes. That's what it says.

21 **Q.** So you're targeting a number higher than the highest
22 partner has achieved to date?

23 **A.** Yes. To date, this would be above what we -- I believe
24 we currently have in place, or at least as of this July
25 metric, with one of our longest-standing partners.

1 Q. Okay. Thank you, sir.

2 MR. WALL: You can take that down.

3 THE COURT: One question. So the way this is done,
4 so take the bus, right, or take Logan. There was a period of
5 time in this chart where the connection did not exist inside
6 security between terminals and B and C?

7 THE WITNESS: Yes.

8 THE COURT: And so that would lower the seamless
9 score because it's -- assuming whether you could transfer
10 without going through security is a factor in the score, then
11 that would have been not adding points to the score prior and
12 then it would be adding points after the connection?

13 THE WITNESS: That's correct.

14 THE COURT: And so it's identifying various things
15 like that that have been predetermined that are across all
16 the partnerships, presumably, that are -- promote
17 seamlessness or go into the score?

18 THE WITNESS: Yeah, that's exactly right. And then
19 the score is weighted so there are some things that are just
20 absolutely critical and some things that are nice to have,
21 things that are critical --

22 THE COURT: But it's an attribute score, not a --
23 not like based on surveys.

24 THE WITNESS: It's an attribute score, but the
25 attributes, themselves, are weighted based on initial an

1 survey.

2 THE COURT: On initial. But the fact that somebody
3 took the bus and didn't like it or whatever is --

4 THE WITNESS: Exactly. No, it's a measure of how
5 well we've done, not how well it's liked.

6 THE COURT: Okay. Got it. Thanks.

7 BY MR. WALL:

8 Q. Just to follow up on that. Are there still seams?

9 A. Yes.

10 Q. And do you get complaints about seams?

11 A. I'm sure we do.

12 Q. Have you gotten any today?

13 A. Yeah.

14 Q. From whom?

15 A. From you.

16 Q. Okay. Are you working on it?

17 A. I am.

18 Q. You're under oath, right?

19 A. We --

20 Q. You're going to get that fixed, right?

21 A. We will get it fixed.

22 Q. All right. Thank you, sir.

23 Okay. Let's go back to Defendants' Exhibit 149,
24 again, with the same -- publish to the lawyers but not to
25 gallery. And we'll go back in this instance to page 18.

1 BY MR. WALL:

2 Q. Okay. So besides seamlessness, are there other metrics
3 on which you measure the success of partnerships, including
4 in the NEA?

5 A. Yes.

6 Q. And what are -- what are the kinds of things that you
7 look at generally?

8 A. What we look at, in both flown and future bookings, how
9 much codeshare is being utilized, connectivity, things like
10 that. And then, of course, something like this, which is
11 sort of a measure of our performance relative to the
12 industry.

13 Q. Okay. So what we have up here on page 18 is entitled
14 "NEA QSI Gap Report," in this instance, April to June.

15 I think the Court has heard a little bit about QSI,
16 but what is "QSI"?

17 A. QSI is the -- it stands for "quality of service index,"
18 and it is essentially a metric that the industry -- the
19 industry internally released a metric that the industry uses
20 to sort of measure the desirability of a schedule in a given
21 origin and destination or a group of origins and
22 destinations.

23 Q. And how is it -- how is it created?

24 A. In this particular instance, the QSI output is from
25 Raven, our model. But it's created based on a set of

1 characteristics of a given schedule or a schedule pattern,
2 and it's then calibrated versus real -- real bookings to see
3 how they actually flew across the schedule.

4 **Q.** Okay. We have a demonstrative on QSI that we can put up.
5 And on the less -- excuse me -- on the left, it has some
6 features defining market share, and on the right is
7 calibration. Can you explain what's going on here and how
8 these criteria are used to determine a QSI score?

9 **A.** Yeah, so the left-hand side, like I said, is a set of
10 features of a given -- a given schedule or network. There
11 are more than this. There are several features, a dozen plus
12 features that the -- that the model uses. And then it uses,
13 on the right-hand side, real observed behavior, how traffic
14 fell across the network based on these -- these features to
15 determine sort of -- to calibrate the model, to determine the
16 quality of service index for a given carrier relative to
17 other carriers in a given origin and destination.

18 **Q.** So how do you -- when you get a QSI output, what is --
19 what is the output? What do you get?

20 **A.** Yeah, it's sort of like your expected -- it's your
21 benchmark. It's where you should perform, all things equal.

22 **Q.** Okay. And what does a QSI gap mean?

23 **A.** The gap would be either positive negative, what you
24 actually did, So your market share relative to your benchmark
25 QSI. So the QSI share gap is your market share relative to

1 your QSI share.

2 **Q.** Okay. So what does it tell you if you are above or below
3 the benchmark?

4 **A.** It would essentially say if you're overpunching or
5 underpunching your weight relative to your network strength.

6 **Q.** Network strength as measured by these --

7 **A.** By QSI.

8 **Q.** -- by these criteria? Okay.

9 MR. WALL: So let's go back to page 18 of DX149 and
10 give us -- got to turn the monitors back off again. Sorry.

11 Great. Thank you.

12 BY MR. WALL:

13 **Q.** So what is on the left side of the page?

14 **A.** So these are market classifications or groupings within
15 the NEA.

16 **Q.** So, you know, for example, AA and B- -- at B6NS, what
17 does that mean?

18 **A.** Yeah, so if you're looking at the top there, you're
19 looking at Boston AA and JetBlue nonstop. So these would be
20 overlapping nonstops in Boston.

21 **Q.** Okay. So this is just indicating that you do the
22 analysis based upon a variety of --

23 **A.** Yep, it's a series of filters.

24 **Q.** Okay. And there's a reference there to PDEWs. What does
25 that mean?

1 **A.** It's a -- in general, you can think of it as a market
2 size. I think it stands for passengers per day each way, so
3 it's number of passengers and kind of helps us scale which
4 markets are bigger and are smaller.

5 **Q.** Okay. If we info to the right-hand side of the page,
6 there are a lot of numbers, some of which are red and some of
7 which are black. Can you tell us how one reads these
8 results?

9 **A.** Yeah. Like, many things in this case, you want more
10 black than red, and the idea is that this is looking at your
11 market share relative to your QSI, that gap, and looking at
12 how that gap changes over time.

13 So it's not saying that if you were above or below
14 a certain point that you should have been above it or below
15 it. It's just saying that here's where you were and here's
16 where you are and how did it change? That's what this
17 represents, the change in share gap.

18 And, you know, the way you read it is, I think, you
19 know, I'll just -- if you go to the bottom line, what you
20 want to see is that your market share gap performance, or at
21 least as part of the NEA where we were growing and trying to
22 become a credible third or great alternative for customers,
23 that you're drawing more demand than you deserve relative to
24 where you were, which is showing a positive share gap. And
25 here you see that at the bottom.

1 **Q.** Okay. And so can you summarize what the results -- what
2 these results are showing about your QSI performance after
3 the NEA?

4 **A.** Yeah. What this shows at the bottom is -- that our share
5 gap for both American and JetBlue has improved relative to
6 the 2019 baseline.

7 **Q.** Okay. We have a demonstrative to summarize some of these
8 data, which is "Called Share Gap Improvement." We'll put
9 that up. What does this show?

10 **A.** This is a graphical view of what we just looked at, at
11 the bottom row, which shows that AA -- American Airlines'
12 share gap relative to 2019 in these NEA markets is 1.3 points
13 positive, and JetBlue's is 0.5 points positive.

14 And because you're looking at, you know, share gap,
15 you -- this is a zero sum game. So here you would indicate
16 it's coming largely from the largest competitors who we're
17 trying to built a network to compete with, which is Delta and
18 United.

19 **Q.** Okay. So relative to the QSI predictions based upon
20 those criteria that you mentioned, American and JetBlue have
21 improved, and the cohort of Delta and United are down?

22 **A.** Yes. That improvement is coming from them.

23 **Q.** Okay.

24 THE COURT: So this -- so their decline is greater
25 than your improvement?

1 THE WITNESS: There's a -- there will be another
2 category of other carriers.

3 THE COURT: Other carriers?

4 THE WITNESS: Yeah.

5 THE COURT: I see. Okay.

6 BY MR. WALL:

7 Q. So --

8 THE COURT: It should all add up to zero?

9 THE WITNESS: Right. It's a change in gap, so it
10 has to add up to zero.

11 BY MR. WALL:

12 Q. And if we went back to the source document, you would see
13 the other airline category and these things would reconcile,
14 right?

15 A. That's right.

16 Q. Okay. All right. Thank you, sir.

17 So taking everything that we just talked about
18 together, what does this analysis tell you about the way the
19 consumers are reacting to the NEA?

20 A. This is what we would have wanted to see, that consumers
21 are selecting AA and JetBlue relative to our largest
22 competitors when you adjust for the changes in schedule.

23 So it needs to be -- zero would have been good,
24 meaning that we are -- like, the schedule we put in place is,
25 you know -- is driving enough traffic to satisfy that; but

1 any positive gap is exactly what we're looking for, that
2 customers are picking AA and JetBlue over our competitors in
3 these markets. It's a positive thing.

4 MR. WALL: Thank you, sir.

5 Pass the witness.

6 MR. BERMANN: Good morning, Your Honor. Grant
7 Bermann, again, for the United States, on behalf of
8 plaintiffs.

9 THE COURT: Good morning.

10 **CROSS-EXAMINATION BY COUNSEL FOR PLAINTIFFS**

11 BY MR. BERMANN:

12 **Q.** Good morning, Mr. Schweinzger.

13 **A.** Good morning.

14 **Q.** You testified about a number of topics today, so I'm
15 going to cover some of them with you.

16 MR. BERMANN: Could we put back up the
17 demonstrative Mr. Schweinzger testified about? I'd like to
18 turn to page 2 of the demonstrative.

19 BY MR. BERMANN:

20 **Q.** Mr. Schweinzger, you testified about the DOT agreement,
21 correct?

22 **A.** That's correct.

23 **Q.** And the DOT agreement does not reference or address
24 Boston in any way, correct?

25 **A.** It does not reference the slot constrained airports.

1 **Q.** The DOT agreement does not require any divestitures in
2 Boston, correct?

3 **A.** It does not.

4 **Q.** The DOT agreement does not have any capacity requirements
5 in Boston, correct?

6 **A.** No.

7 MR. BERMANN: Let's turn to the next slide.

8 BY MR. BERMANN:

9 **Q.** Mr. Schweinzger, the DOT capacity commitments in New York
10 don't last beyond 2025, correct?

11 **A.** I believe that the end of the commitment is in 2025.
12 That's correct.

13 **Q.** One way that American and JetBlue may try to meet the DOT
14 capacity commitment in New York is by JetBlue flying bigger
15 planes than American had been flying beforehand, correct?

16 **A.** I believe that would -- yes, that would be a way to grow
17 on a defined set of assets.

18 **Q.** And that's something American and JetBlue could have done
19 even without the NEA, correct?

20 **A.** I'm not sure.

21 **Q.** Let's turn to PX301.

22 MR. BERMANN: Your Honor, the Exhibit has already
23 been admitted. There are no reactions.

24 THE COURT: All right.

25 MR. BERMANN: If we could display 301, that would

1 be great.

2 BY MR. BERMANN:

3 Q. Mr. Schweinzger, this is an e-mail you received from
4 Ms. Nichelle Barrett in January of 2021, correct?

5 A. Yes. I recognize this from my deposition.

6 Q. In her e-mail of 2:18 p.m., which is at the bottom half
7 of the first page, Ms. Barrett asked you questions about
8 upgauging aircraft in New York, correct? I'd like you to
9 focus on the language that begins "Does this mean." Do you
10 see that?

11 A. She's asking if they'll be utilizing some of our slots.
12 I'm looking for the upgauging.

13 Q. And you answered Ms. Barrett's questions, correct?

14 A. I don't recall this exchange. I see it says where I
15 wrote, "Hi, Nichelle. My first pass below." So to be
16 honest, I don't recall. It appears that I may have, yes.

17 Q. Okay. Would it help if I showed you some documents to
18 refresh your recollection?

19 A. I'm not sure.

20 MR. BERMANN: Your Honor, may we present the
21 witness with two documents to refresh his recollection as
22 to --

23 THE COURT: Sure.

24 MR. BERMANN: -- this text -- this exchange?

25 Your Honor, may my colleague approach?

1 THE COURT: Of course.

2 MR. WALL: What are the documents?

3 MR. BERMANN: I'm handing out two documents, one --

4 THE COURT: I think he's -- right?

5 MR. BERMANN: -- AA-NEA-01528593. That's the
6 e-mail that Ms. Barrett sent to the witness. And then I'm
7 also handing out AA-NEA-01528603. That is Mr. Schweinzger's
8 response to Ms. Barrett's e-mail.

9 THE COURT: So he just wants you to read these
10 documents to yourself, to see -- when you're done, he'll
11 return to the question.

12 BY MR. BERMANN:

13 Q. So, Mr. Schweinzger, we've handed you two documents. The
14 first one has a Bates number on the bottom right ending
15 in 593.

16 A. Yep, I see that.

17 Q. Do you see that? And that's an e-mail from Ms. Barrett
18 to you, correct?

19 A. Yes. She's on top there, yes.

20 Q. And she asked you questions in her e-mail, correct?

21 A. Yes.

22 Q. And there are no answers to her questions yet, correct?

23 A. I don't see anything below the questions she asked, no.

24 Q. So let's look at the other document you were handed. It
25 has a Bates number ending in 603.

1 MR. WALL: Your Honor, just to -- I'm just going to
2 object to the way this is being done. It's supposed to -- if
3 this --

4 THE COURT: Yeah, if you want him to refresh his
5 recollection, you just have to have him read the documents
6 himself. Then once he's done reading --

7 Why don't you read the documents yourself.

8 And when you're [sic] done, just ask him the
9 question you asked him before you showed him the documents.

10 MR. BERMANN: Sure.

11 THE WITNESS: Okay.

12 MR. WALL: Can we have the document taken down off
13 the screen?

14 THE WITNESS: I see this.

15 BY MR. BERMANN:

16 Q. And you see that you responded to Ms. Barrett's --

17 A. Yes.

18 Q. -- questions, correct?

19 A. It does appear that, when I respond, the answers that you
20 showed previously are below here.

21 Q. Okay. So let's turn back to the exhibit we were talking
22 about --

23 A. Okay.

24 Q. -- now that you've refreshed your recollection.

25 MR. WALL: Wait, wait, wait.

1 THE COURT: Is that a question?

2 MR. WALL: You haven't asked him that yet.

3 MR. BERMAN: Sorry.

4 BY MR. BERMAN:

5 Q. Does that refresh your recollection as to whether you
6 answered Ms. Barrett's questions?

7 A. I don't recall this specific exchange, other than from my
8 deposition, what you've shown me here, but I see that after
9 here, clearly, there were no answers and now there are
10 answers. So I -- it would appear to me that, clearly, these
11 are things that I would have written.

12 Q. Okay. Thank you.

13 Let's turn back to PX301.

14 THE COURT: 301 is the one that ends in Bates stamp
15 603? Or no. I see. It's a different version of the
16 exhibit. Okay. Go ahead.

17 BY MR. BERMAN:

18 Q. In your e-mail of 2:18 p.m., Ms. Barrett asked you
19 whether JetBlue will be using some of American's slots to
20 expand, correct?

21 A. Yes.

22 Q. And she asked you also whether the NEA allows American
23 and JetBlue to move slots between the two carriers, correct?

24 A. Yes.

25 Q. And you answered that American and JetBlue do plan to

1 lease slots back and forth, correct?

2 **A.** Yes. That's what it says, yes.

3 **Q.** And then below that, you wrote, "The NEA doesn't
4 specifically create that ability. We could have always done
5 that." Did I read that correctly?

6 **A.** That is what it says and it says, "But we do plan to do
7 this as part of the NEA?" with a question mark.

8 **Q.** And this was a fact check for immediate inquiry, right?

9 **A.** She was asking for facts for immediate inquiry. That's
10 correct.

11 **Q.** And you try to be truthful when you respond to colleagues
12 that are doing fact checks for the public, correct?

13 **A.** Yes.

14 **Q.** I'd like to turn to another topic. Mr. Schweinzger, you
15 testified about how the NEA is being implemented, correct?

16 **A.** Yes.

17 **Q.** Let's look at an internal American Airlines presentation
18 about the implementation of the NEA that you were on.

19 MR. BERMANN: Could we pull up PX1121? This
20 exhibit has already been admitted.

21 BY MR. BERMANN:

22 **Q.** This has an e-mail you received on March 22, 2021,
23 correct?

24 **A.** Yes. I recognize this from my deposition as well.

25 MR. WALL: I object to this. This is beyond the

1 scope. He didn't talk about anything having to do with the
2 subject of revenue management.

3 THE COURT: The subject of what?

4 MR. WALL: Revenue management. RM is what's on the
5 cover of this.

6 THE COURT: Give me one second.

7 MR. BERMANN: Your Honor, the witness has testified
8 in his direct testimony about implementation of the NEA, and
9 I'm asking him about an internal American presentation about
10 the implementation of the NEA that the witness received and
11 that he discussed with a colleague.

12 MR. WALL: That's literally not responsive to the
13 question of whether it's within the scope of his -- of his
14 direct.

15 THE COURT: He didn't talk about revenue
16 management, did he?

17 MR. BERMANN: He did not talk about revenue
18 management specifically. We talked about how the NEA was
19 being implemented and I have some questions for him on that
20 same subject matter.

21 THE COURT: Well, I'll overrule the objection for
22 now, but it seems like what he testified about was
23 seamless and the gap and -- so we'll see. You can ask
24 the first question.
25

1 BY MR. BERMANN:

2 Q. And, Mr. Schweinzger, the way seamlessness --
3 quote/unquote -- is created by the NEA is through metal
4 neutrality, correct?

5 A. I think metal neutrality is an important part of
6 seamlessness, but seamlessness itself means that you're
7 getting your benefits or you're offering a customer a
8 cohesive experience, and it applies to all partnerships for
9 American Airlines, not just those with metal neutrality.

10 Q. So this is an e-mail -- turning to the exhibit -- that
11 you received on March 22, 2021, correct?

12 A. Yes, I'm on the "To" line.

13 Q. And as of March 2021, the NEA was being implemented,
14 correct?

15 A. Yeah. We were just starting to implement it.

16 Q. And when you received this presentation that Ms. Colvin
17 sent you, you sent an e-mail to Mr. Bhargava, your boss on
18 the clean team, right?

19 A. I believe that I recall that from my deposition, yes.

20 Q. Let's take a quick look at that e-mail. Let's turn to
21 PX325.

22 I'd like you to focus on your e-mail in the middle
23 of the page. You wrote to Mr. Bhargava, "We've not done this
24 ourselves for multiple reasons that become obvious reading
25 this deck," correct?

1 MR. WALL: I renew the objection.

2 MR. BERMANN: Your Honor, the witness has just
3 testified that metal neutrality is an important part of
4 seamlessness.

5 THE COURT: But he didn't testify about metal
6 neutrality or revenue management. It seems like it's beyond
7 the scope. I don't know what this document is about. I
8 haven't read it yet. But he talked about the customer
9 experience. He didn't talk about -- I don't recall him
10 talking anything about the money.

11 I don't think every -- by talking about
12 seamlessness, I mean, every single aspect of implementation
13 is within the scope.

14 MR. BERMANN: I can move on, Your Honor.

15 THE COURT: All right.

16 BY MR. BERMANN:

17 **Q.** Mr. Schweinzger, in your direct testimony, you testified
18 about the text message exchanges you sent to Mr. Pack in
19 May 2020, correct?

20 **A.** Yes.

21 **Q.** And, Mr. Schweinzger, were you in the courtroom this
22 morning when the Court heard arguments over the privileged
23 documents?

24 **A.** If that's what we were doing this morning, then, yes,
25 that's exactly -- I was sitting right there.

1 **Q.** So you heard Mr. Wall's description of the "no bueno"
2 text during that argument, correct?

3 **A.** I don't recall what he said, but I know he referenced it.

4 **Q.** So, Mr. Schweinzger, the Court has already heard
5 testimony about the text messages, so I don't want to rehash
6 the entire background for the sake of efficiency, but I do
7 have some quick questions to set up the context, so we can
8 understand the text message exchanges.

9 You, Mr. Pack, and Mr. Bhargava were members of
10 American's clean team, correct?

11 **A.** That's correct.

12 **Q.** And as part of its work, the American clean team used the
13 tool Raven, right?

14 **A.** Can you say that again? I'm sorry.

15 **Q.** As part of its work, the American clean team used the
16 tool called Raven?

17 **A.** Yes.

18 **Q.** Raven is a network forecasting tool?

19 **A.** Yes.

20 **Q.** Raven forecasts traffic generated by a particular
21 schedule?

22 **A.** Yes.

23 **Q.** And the clean team gave outputs from Raven to an economic
24 consulting firm called Compass Lexecon, correct?

25 **A.** I believe that the outputs of the clean team work, which

1 would have been the -- the scheduled file run through Raven
2 were provided to our regulatory team, yes.

3 **Q.** And you understand that Compass Lexecon analyzed the
4 benefits of the NEA, correct?

5 **A.** I do believe so.

6 **Q.** So let's focus on what was happening in May 2020. In
7 May 2020, the American clean team requested the v4 schedule
8 from JetBlue, correct?

9 **A.** I -- I don't recall that, but I understand if that is the
10 case. I know that there was some conversation around that.

11 **Q.** And you understand that the v4 schedule was a schedule
12 that projected what would have happened in 2019 if the NEA
13 were in effect at that time, correct?

14 **A.** My recollection through -- through reading some of these
15 documents is that that schedule would have been something
16 that was a request to constrain ourselves from an asset
17 perspective to what we had in 2019.

18 **Q.** American received the upload of JetBlue's data for the v4
19 schedule on May 29th, correct?

20 **A.** I --

21 MR. WALL: Excuse me? A vague -- what data are you
22 talking about?

23 MR. BERMANN: Sure. We can pull up an exhibit to
24 help the witness.

25 Let's pull up PX0297. Your Honor, the exhibit is

1 already in evidence.

2 THE COURT: All right.

3 BY MR. BERMANN:

4 Q. At the bottom of this e-mail chain of the -- on the first
5 page, there's an e-mail from David Fintzen at 7:56 a.m. Do
6 you see that at the bottom of the first page?

7 A. I do.

8 Q. Mr. Fintzen was on the JetBlue clean team, correct?

9 A. That's correct.

10 Q. And he wrote on May 29th, "Our v4 data pack with adjusted
11 frequencies and aircraft types is posted up in the shared
12 folder." Correct?

13 A. I do see that, yes.

14 Q. Okay. So let's look at what you wrote the day you
15 received the v4 schedule data from JetBlue. Let's turn to
16 demonstrative 372A.

17 MR. BERMANN: Your Honor, this demonstrative has
18 already been provided to defendants and defense counsel used
19 it during the direct examination.

20 THE COURT: Okay.

21 BY MR. BERMANN:

22 Q. I'd like you to focus, Mr. Schweinzger, on the third page
23 of the text messages. And I'd like you to look at the fifth
24 text message on that page.

25 A. Yes.

1 **Q.** Do you see that? Later, on May 29th, after you received
2 the v4 schedule data from JetBlue, you wrote, "I'm completely
3 out of ideas. So . . . If we show the full network
4 results . . . no bueno." Correct?

5 **A.** I did write that in the afternoon of May 29th.

6 **Q.** And then a minute later, if you look down the text
7 messages, you wrote, "Based on what I'm hearing here, if I
8 was DOJ, I could easily kill any deal . . . any deal. No
9 deal positive. Ever." Correct?

10 **A.** Yes.

11 **Q.** That's what you wrote the day you received the v4
12 schedule data from JetBlue, correct?

13 **A.** That the v4 schedule data from JetBlue is uploaded into
14 the clean team file. I don't recall looking at or seeing the
15 v4 schedule data from JetBlue.

16 THE COURT: Is that the first time you ever got
17 that v4 data, as far as you know?

18 THE WITNESS: Again, I don't know what was --
19 frankly what was in it. I think that was, like, largely a
20 scheduling effort. That would have been handled by Jordan
21 and that team, but yes, that's -- to my knowledge, based on
22 reading these, and these e-mails would have been when they
23 uploaded it the first time we had it.

24 THE COURT: When it uploaded is the first time you
25 had it. My question is -- I understand that, because that's

1 how you shared things, right?

2 THE WITNESS: Right.

3 THE COURT: They would upload something, and that's
4 how you got it?

5 THE WITNESS: Yeah.

6 THE COURT: Was that the first time, if you know,
7 that it was uploaded?

8 THE WITNESS: I don't. I believe so. I have no
9 idea frankly, but I believe so based on that e-mail exchange
10 we just had.

11 THE COURT: Go ahead.

12 BY MR. BERMAN:

13 **Q.** Mr. Schweinzger, you provided testimony today about the
14 context and meaning of those text messages we just saw,
15 correct?

16 **A.** Yes, I did.

17 **Q.** But you were deposed earlier in this litigation, correct?

18 **A.** That's correct.

19 **Q.** And that deposition took place in April of 2022?

20 **A.** Yes.

21 **Q.** And at that deposition, you were asked about the text
22 messages? Correct?

23 **A.** That's correct.

24 **Q.** And at your deposition, you testified that you did not
25 recall the text messages?

1 **A.** That's correct.

2 **Q.** You testified multiple times that you did not recall the
3 text messages?

4 **A.** That is correct.

5 MR. BERMANN: Your Honor --

6 BY MR. BERMANN:

7 **Q.** Mr. Schweinzger, when between April and today did you
8 recover your recollection of the text messages?

9 **A.** Well, let's see. So they were a big part of my
10 deposition, so when I understood that we were coming to trial
11 and that I was going to be here, I started trying to review
12 some of the timelines here. This was several years ago, so I
13 could understand what some of these things that I had been
14 asked about meant or were about. So it would have been last
15 several weeks. Maybe a little bit longer than that, that I
16 went through my notes.

17 **Q.** What caused you to investigate the context of the text
18 messages?

19 **A.** Let's see. It would have been in preparation for today,
20 or for trial, and understanding what happened on that day,
21 what the meetings were, et cetera, and trying to place some
22 of these different files, which I wasn't necessarily certain
23 of when or where or things like that, where they came from,
24 would have been why I wanted to go back through there before
25 I got here today.

1 **Q.** Were you with counsel when you recovered your
2 recollection of the text messages?

3 **A.** I don't -- I don't recall my first review of any of this
4 information to be when I was with counsel.

5 **Q.** Did you discuss your recollection of the text messages
6 with counsel?

7 **A.** Yes.

8 **Q.** And so today, having done that investigation, your
9 testimony now is that you were participating in a call at the
10 time you wrote the May 29th text messages we discussed,
11 correct?

12 **A.** That's correct. I looked at my calendar. There was call
13 with -- with the -- with the regulatory team at the same time
14 that these text messages were being exchanged.

15 That's when I recall the dialogue around the
16 but-for scenarios and all the significant lift and effort
17 that would have been required to do that. It's also when I
18 recall sort of finalizing and, per the e-mails, right, and
19 the documents, our internal case for the NEA.

20 **Q.** Was Latham & Watkins on that call that you had on
21 May 29th?

22 **A.** I believe so, that they were, yes.

23 **Q.** Was Compass Lexecon on the call on May 29th?

24 **A.** Yes, I believe so.

25 **Q.** Was Dr. Israel on the call from Compass Lexecon on

1 May 29th?

2 **A.** I don't recall specifically if he was, but it's more than
3 likely that he would have been, as he joined those calls.

4 **Q.** At the end of the call, did you understand that you were
5 not to run the v4 schedule through Raven?

6 **A.** I don't recall that to be the case. I was advocating
7 that we not do any more work related to Raven. That's all I
8 recall from that.

9 **Q.** So your testimony today is that you were on a call
10 discussing the NEA with antitrust counsel and antitrust
11 economists when you concluded, quote, "If we show full
12 network results . . . no bueno." Correct?

13 **A.** Again, my -- what I believe I said and what my knowledge
14 is or my recollection of this is that we were being asked to
15 do additional incremental work to support a but-for sort of
16 world that I was not in support of nor did I want to do,
17 which is where these came from.

18 And that was in preparation for what I think our
19 regulatory team was saying a likely case would be and things
20 we need to prepare for, things that we should study and look
21 for. And that is probably a poor choice of words, but
22 certainly sarcasm, because what they were explaining to us, I
23 recall, believing how in the world can this be the case?
24 Nothing could ever get -- get approved.

25 **Q.** Okay. Mr. Schweinzger, your counsel will have an

1 opportunity to ask you questions --

2 **A.** Okay.

3 **Q.** -- in redirect. But for now, I just ask you that you
4 focus on the question --

5 **A.** Yes, sir.

6 **Q.** -- I'm asking.

7 So my question was your testimony today is that you
8 were on a call discussing the NEA with antitrust counsel and
9 antitrust economists when you concluded, quote, "If we show
10 full network results . . . no bueno." Correct?

11 **A.** I believe I was on a call when I wrote that text, yes.

12 **Q.** And that call was with antitrust counsel and antitrust
13 economists, correct?

14 **A.** Yes, our regulatory team.

15 **Q.** You discussed with me a bit earlier in my questioning how
16 you received the v4 data pack from JetBlue on May 29th,
17 correct?

18 **A.** Yeah. I was just making a clarification. I don't
19 believe we sent documents as addressing, I believe, what the
20 judge said. I think we just uploaded them.

21 **Q.** You asked Mr. Pack to do back-of-the-envelope
22 calculations on the v4 schedule that you received from
23 JetBlue, correct?

24 **A.** I don't -- I don't recall. Sorry. Is that here?

25 **Q.** I may return to that in a moment.

1 **A.** Okay.

2 **Q.** Let's talk about what happened after you wrote the
3 May 29th text messages. Please turn to Demonstrative 374A.

4 MR. BERMANN: Your Honor, this is a demonstrative
5 we've previously given to defendants, and we understand there
6 are no objections.

7 THE COURT: All right.

8 BY MR. BERMANN:

9 **Q.** These are text messages between you and Mr. Bhargava on
10 June 2, 2020, correct?

11 **A.** Yes. That's what it appears to be.

12 **Q.** So that's a few days after the May 29th text messages,
13 correct?

14 **A.** Yes.

15 **Q.** I'd like you to focus on the fourth text. Do you see
16 that?

17 **A.** I do.

18 **Q.** In that text, you wrote that American was going to have
19 an internal call with Compass Lexecon the following day,
20 correct?

21 **A.** I believe so. I mean, yes, that's what it says.

22 **Q.** And that call occurred, correct?

23 **A.** That, I don't -- I'm not sure. I believe it would have
24 if it was -- if it was scheduled, but many of these calls
25 were moved.

1 **Q.** Let's look further down to the language five texts down
2 that begins "that they." Do you see that?

3 **A.** Yes.

4 **Q.** And there you're saying that Compass needs to make the
5 regulatory case for the NEA, correct?

6 **A.** I'm sorry; I don't know if I'm speaking specifically
7 about Compass here. This is a little bit of a confusing
8 string.

9 **Q.** But you are talking about making a regulatory case,
10 right?

11 **A.** I think we're talking about -- it looks like scheduling,
12 like trying to get the schedule, correct. And what I'm
13 trying to just -- if you give me just a second.

14 **Q.** Sure. And my question isn't right now about the call
15 that happened with compass. I'm asking you about the second
16 text that we're reviewing here, the one that refers to making
17 the regulatory case.

18 **A.** Uh-huh.

19 **Q.** Do you see that?

20 **A.** I do.

21 **Q.** Focusing on that text, you're saying there that Compass
22 Lexecon needs to make the regulatory case for the NEA,
23 correct?

24 **A.** I'm just saying they. I don't know what "they" is in
25 reference to here.

1 **Q.** Someone needs to make the regulatory case for the NEA,
2 correct?

3 **A.** I think we need -- that's what it says, that they need to
4 make the regulatory case.

5 **Q.** Let's look where at the call that happened the following
6 day.

7 MR. BERMANN: Let's put up PX1144.

8 Your Honor, this exhibit has not yet been admitted.
9 It's a document that defendants withheld as privileged for
10 several months but produced on Thursday in response to our
11 motion to compel. I'd like to move PX1144 into evidence.

12 MR. WALL: I'd like to see it first.

13 No objection.

14 THE COURT: Admitted.

15 (Plaintiffs' Exhibit PX1144 admitted into
16 evidence.)

17 BY MR. BERMANN:

18 **Q.** This is a calendar invitation sent by Mr. Paik at
19 Latham & Watkins, correct?

20 **A.** Yes.

21 **Q.** And the American clean team received the invitation for
22 the call, correct?

23 **A.** Yes.

24 **Q.** Dr. Israel from Compass Lexecon was on the calendar
25 invitation, correct?

1 **A.** Yes.

2 **Q.** And the subject of your call with Latham & Watkins and
3 Dr. Israel was "Garland" -- that refers to the NEA, correct?

4 **A.** Yes. That was the -- yes.

5 **Q.** "Counterfactual," correct?

6 **A.** That's correct.

7 **Q.** So a few days after you wrote that if you show the full
8 network results no bueno, you had a call with Compass about a
9 counterfactual in connection with the NEA, correct?

10 **A.** That's what this shows, yes.

11 **Q.** The clean team was trying to find a counterfactual that
12 would allow it to make the regulatory case for the NEA,
13 right?

14 MR. WALL: Objection, Your Honor. Not just on the
15 privilege grounds, but at this point on 403 grounds. This is
16 a monumental waste of time.

17 MR. BERMANN: Your Honor, we have before us --

18 THE COURT: What's the question again?

19 MR. BERMANN: The question was the clean team was
20 trying to find a counterfactual that would allow it to make
21 the regulatory case for the NEA.

22 MR. WALL: I mean, to begin with --

23 THE COURT: Sustained as to that question.

24 I mean, the whole point of the regulatory -- of
25 lawyers going to the government is to persuade the government

1 to approve whatever it is their client wants. So that's just
2 what -- that's why they're hired. I would -- there is no
3 counterfactual to that. I've never seen a case where counsel
4 or a client hired lawyers to persuade the government to
5 disapprove what the client wanted to do. So of course they
6 were trying to figure out how to best position this. I mean,
7 I'm -- I can't imagine how I wouldn't conclude that was the
8 entire purpose of the -- not the entire purpose, but a huge
9 purpose for legal counsel in review.

10 BY MR. BERMANN:

11 **Q.** This call about the counterfactual with Compass and
12 Latham & Watkins occurred a few days after you received the
13 v4 date schedule data from JetBlue, correct?

14 **A.** Yes.

15 MR. BERMANN: And, Your Honor, I realize we're at
16 eleven o'clock. I do have some additional questions, but
17 can --

18 THE COURT: How much?

19 MR. BERMANN: I imagine five minutes, ten minutes.

20 THE COURT: Why don't you keep going for now.

21 BY MR. BERMANN:

22 **Q.** Mr. Schweinzger, the American clean team never provided
23 any Raven outputs from the v4 schedule to Compass Lexecon,
24 correct?

25 **A.** I don't recall ever seeing any Raven outputs from any v4

1 schedule for -- for the clean team.

2 **Q.** And you're not anywhere of anyone else on the American
3 clean team sending Raven outputs from the v4 schedule to
4 Compass Lexecon, correct?

5 **A.** If it wasn't Anmol, myself, Jordan, or Matt -- Matt
6 McElfresh, who was --

7 THE COURT: You don't recall seeing them at all?

8 THE WITNESS: I do not.

9 THE COURT: Never mind whether or not they were
10 sent to Compass?

11 THE WITNESS: I don't.

12 BY MR. BERMANN:

13 **Q.** Mr. Schweinzger, earlier the judge ask you some questions
14 about the v4 schedule. Do you recall that?

15 **A.** The question about how it was uploaded?

16 **Q.** He asked you about the fleet constraints in the v2 and v4
17 schedule?

18 **A.** I didn't know that was about the v4 schedule. He asked
19 me about whether or not we planned for fleet constraints.
20 That's correct.

21 **Q.** And you talked about the differences between the v2 and
22 v4 schedule?

23 **A.** I don't believe so, no.

24 **Q.** Mr. Schweinzger, earlier I asked you about whether you
25 had asked Mr. Pack to do back-of-the-envelope calculations

1 with respect to the v4 schedule data you received from
2 JetBlue on May 29th, correct?

3 **A.** Yes, you did.

4 **Q.** I'd like to go back to 372A, page 2. And if we could
5 just highlight there the relevant language. You received a
6 message from Mr. Pack at what's marked as 8:22 p.m., correct?

7 **A.** Here, yes.

8 **Q.** And you wrote, "Slightly scared that when we run v4
9 through Raven, B6 may not be rev positive," correct?

10 **A.** That's what it says Jordan wrote.

11 **Q.** And then you asked Mr. Pack, "Can you get a quick summary
12 of adds and cancels? We have the 2019 base revenue in the
13 current Raven runs so we can get a sense for how much they
14 are canceling."

15 **A.** I do see that.

16 **Q.** So you agree that -- and Mr. Pack liked that message that
17 you sent to him, correct?

18 **A.** I do -- I do see that.

19 **Q.** So when you wrote, "Can you get a quick summary of adds
20 and cancels," you were referring to having Mr. Pack do some
21 back-of-the-envelope math, correct?

22 **A.** I am referring to him -- asking him to do some quick
23 math. That's correct.

24 THE COURT: You mean not just list what flights are
25 being added and canceled, but based on the 2019 base revenue

1 that you already had in Ravin, what those would do to
2 revenue?

3 THE WITNESS: Yeah, I'm guessing I'm trying to
4 figure out what the net impact of whatever this is is going
5 to be before we look at it. I don't know if he ever did that
6 or if I ever -- again, I'm not sure that I ever saw it.

7 BY MR. BERMANN:

8 Q. Did you ever have conversations with Mr. Pack about that
9 math that you asked him to do?

10 A. I don't recall any, no.

11 Q. But after you received the v4 schedule, you're not aware
12 of yourself or anyone else at American sending outputs from
13 Raven for the v4 schedule to Compass Lexecon, correct?

14 A. I don't believe so, no. I'm not aware of any.

15 Q. And the NEA was signed in July 2020, correct?

16 A. I believe that's correct.

17 Q. So that's about a month and a half --

18 A. I'm sorry. I think it was announced in July of 2020.
19 I'm not certain when it was signed.

20 Q. And so that's about a month and after these text
21 messages, correct?

22 A. Yes.

23 MR. BERMANN: No further questions at this time,
24 Your Honor.

25 THE COURT: Any redirect?

1 MR. WALL: Just one question.

2 **REDIRECT EXAMINATION BY COUNSEL FOR AMERICAN AIRLINES**

3 BY MR. WALL:

4 **Q.** Of your personal knowledge, do you have any basis to
5 believe that the v4 schedule was ever run through Raven?

6 **A.** I do not.

7 MR. WALL: Thank you, sir. Nothing further.

8 THE COURT: All right. Thank you very much.

9 You're excused. We'll take the morning break now.

10 (Court in recess at 11:06 a.m.)

11 (The following reported by Rachel Lopez.)

12 (Court reconvened at 11:24 a.m.)

13 THE COURT: Okay. So I changed my mind. I decided
14 I don't want to read these. I thought about it a little bit,
15 and I decided in the first instance, I don't think I should
16 read them first. I understand it would be more efficient if
17 I read them. That's why I was going to do it, but it
18 contains privileged information, which is different than like
19 exhibits in some way, and that -- where I'm ruling on
20 admissibility or not, I read the exhibits and decide and then
21 decide it's excluded. So I have not opened these, and I'm
22 going to give them back. And what I've done is this.

23 I talked to Magistrate Judge Robertson, who's --
24 sits in Springfield, but one of the magistrate judges here.
25 I explained the issue I'm going to -- I'm going to ask that

1 you, Mr. Wall, can have somebody e-mail Ms. Belmont. It
2 doesn't make a difference to me. You can certainly e-mail
3 Ms. Belmont, and I think it would be the simplest thing and
4 she will forward it on. I'm not going to look at them. And
5 when this is all done, we're going to put them on the docket
6 as some sort of sealed exhibit, or we'll put it on paper.
7 Maybe we'll just put one of those notebooks in an envelope
8 and put it in the paper file, just so it's preserved for the
9 record. And I've asked Judge Robertson, she to look at it.
10 I've explained the context. I'm also going to give her the
11 text messages, just so that she understands what we're
12 talking about here. And then I'm going to ask -- then I'm
13 going to talk to her about it after -- and I'm thinking that
14 I resolve the legal -- so I'll resolve the legal issues, but
15 I've explained it to her, and I'm gonna -- and in the first
16 instance, ask her to sort of weigh in for me, having read the
17 documents, without telling me what's in the documents, how
18 they bear on my view of the different issues that I aligned
19 for you before.

20 What would be helpful to also e-mail, since we
21 don't have a copy of it, is a demonstrative of the text
22 messages, because that's really much more useful than the
23 exhibit. So if you can e-mail Ms. Belmont the demonstrative
24 of the text messages and then the exhibits that were in the
25 notebook. Then I just think -- at least it's a little

1 slower, I understand, it's a little more step by step, but I
2 think it's better to be careful on a privilege issue like
3 that. So that's why I didn't look at it and I haven't.

4 Okay. Next witness?

5 MR. WALL: Yes.

6 THE COURT: I'm hoping I'll have it resolved -- or
7 at least I'll have something more to tell you by 2 o'clock.

8 MR. WALL: Okay. So the defendants call Dr. Mark
9 Israel.

10 (The witness was duly sworn.)

11 THE COURT: So I may have more to tell you by
12 2 o'clock, but that doesn't mean we're sitting this afternoon
13 at 2 o'clock. Just a reminder, unless you inferred it
14 incorrectly from that statement.

15 MR. WALL: Well, actually, we have a little time
16 after today, so it's not as big of a rush as it might have
17 been under other circumstances.

18 THE COURT: Right.

19 **MARK ISRAEL, Ph.D.**

20 having been duly sworn, testified as follows:

21 **DIRECT EXAMINATION BY COUNSEL FOR DEFENDANT AMERICAN AIRLINES**

22 BY MR. WALL:

23 **Q.** Good morning, Dr. Israel.

24 **A.** Good morning.

25 **Q.** What is your occupation, sir?

1 **A.** I'm an economist. I do competition economics. I'm a
2 senior managing director at Compass Lexecon.

3 **Q.** And there have been a lot of references to Compass
4 Lexecon. What is Compass Lexecon?

5 **A.** It's an economic consulting firm, largely does issues in
6 competition economics, but more broadly sort of any economics
7 topics, people who do labor economics and public economics,
8 it's an economics consulting firm. My role there, as the
9 senior managing director, I oversee the north American
10 antitrust business.

11 **Q.** Okay. And could you please describe briefly your
12 educational background?

13 **A.** Sure. I have a Ph.D. in economics from Stanford
14 University in 2001. I was there from '95 to 2001,
15 specializing in industrial organization and competition
16 economics, I taught classes while I was there in those
17 topics, and econometrics, and game theory.

18 **Q.** What did you do after you left Stanford?

19 **A.** I went to teach at Northwestern University outside of
20 Chicago, so I was part of the business school there, Kellogg
21 School of Management, full time until 2006. So I was in the
22 business strategy department, which is sort of used what I
23 had learned in economics, but also transitioned it more into
24 studying and teaching competition questions, but from a
25 business strategy point of view, so focusing on how firms

1 compete, and how firms are able to find business models to
2 maintain profitability in the face of competition.

3 **Q.** And you joined Compass Lexecon after that?

4 **A.** Correct. In 2006.

5 **Q.** Okay. Do you have any concentration on any industries?

6 **A.** I mean, not explicitly. I work on competition in
7 antitrust issues across the board, sort of overtime, growing
8 out of my teaching, and so on, I think I'm known for doing a
9 lot of work in airlines and in transportation generally, and
10 also in telecommunications.

11 **Q.** Have you published any papers relating to the airline
12 industry?

13 **A.** I have. I have three papers on the airline industry that
14 have been published in peer-reviewed journals.

15 **Q.** Can you just run us through those?

16 **A.** Sure. And they are -- I mean, they are very much topical
17 to things we've been discussing, so maybe I'll just mention
18 briefly what the topics were.

19 So in 2013, myself and a few co-authors published a
20 paper in the review of network economics. I'll forget the
21 exact title, but basically it's something like airline
22 networks and consumer welfare. It's also on a topic that's
23 come up, I've been listening to the whole trial, mostly by
24 the Zoom, but I know there was a discussion from Dr. Town
25 about this issue that better airline networks, better airline

1 presence is a benefit, but can also lead to higher prices
2 under some circumstances. That paper was studying those --
3 bringing those effects together, and seeing which wins. And
4 we found that the -- you know, that the quality effects
5 dominate any price effects that there's growth in, output,
6 and consumers benefit from larger airline networks.

7 Then in 2017, I believe, a couple co-authors,
8 again, and myself, published a paper on international airline
9 alliances. So very topical here. That was in the *Journal of*
10 *Competition Law and Economics*. That paper found that -- did
11 a full historical study of all the international alliances
12 that have occurred. And found that they have been
13 overwhelmingly procompetitive, leading to lower fares and
14 increased capacity, including on the nonstop overlaps, where
15 the alliance partners previously competed, as well as on the
16 broader connecting network.

17 And then in 2019, again, some co-authors and myself
18 published a paper in the *International Journal of Industrial*
19 *Organization*. It was a retrospective on the three big legacy
20 airline mergers that I know have been discussed,
21 Northwest/Delta, United/Continental, and American/US. Again,
22 studying the -- what had happened on those mergers,
23 particularly on the nonstop overlaps, and found that across
24 the board on the nonstop overlaps, capacity had gone up, and
25 prices had gone down.

1 **Q.** Have you also published on topics related to
2 econometrics?

3 **A.** Yes, I do a lot of work in econometrics and so myself and
4 two authors at Compass Lexecon, are the authors -- there's
5 a -- the ABA has a treatise called "Proving Antitrust
6 Damages," and there is a chapter in there about econometrics
7 and regression analysis, and myself and two of my colleagues
8 are the authors of that chapter.

9 **Q.** What is your experience analyzing the competitive effects
10 of airline industry transactions?

11 **A.** I've been working in airlines for a long time, as I said,
12 it was something that I taught and had started researching
13 while I was still at Northwestern. And so I got involved in
14 it when I was doing more day-to-day antitrust work. So I was
15 involved in the private litigation part of the
16 Northwest/Delta case. It was a private lawsuit about that
17 case I was involved in. I worked on the United/Continental
18 merger. I was one of the leading economists on the American/
19 US Airways merger. I've worked on the US Airways/Delta slot
20 swap and a variety of international alliances. That's kind
21 of been a focus for the last several years. I worked on --
22 let me see if I remember them. Delta, Virgin, Blue, Hawaiian
23 Airlines, and JAL, Japan airlines, and various things on the
24 American Atlantic Joint Business.

25 **Q.** And are those essentially antitrust immunity proceedings

1 that you're talking about?

2 **A.** All of the international alliance cases have been
3 antitrust immunity cases, so they have been cases about the
4 alliances seeking grants of antitrust immunity. In the case
5 of the American ones, there was an initial grant of antitrust
6 immunity and then it ultimately was reviewed again by the CMA
7 in London, as a result of Brexit, I think, the UK got some
8 authority to review it, and so there was a long proceeding
9 related to that.

10 **Q.** Okay. And as part of the antitrust immunity
11 applications, is there some occasion to undertake what are
12 known as consumer benefit studies?

13 **A.** Yeah, it did take different forms in different cases, but
14 generally, on all those cases, there's an exercise in which,
15 you know, there are plans about how the -- how the alliance
16 will run, or there are models that have been done about how
17 the alliance will run, and benefit studies are done based on
18 what the effect of the alliance will be on things like
19 capacity and output.

20 **Q.** Have you given testimony in courts or in regulatory
21 proceedings?

22 **A.** Lots of times. So I've been in federal court on several
23 merger trials, for the most part, but some other antitrust
24 cases. I've testified in state courts, courts in Canada,
25 several arbitration proceedings, regulatory matters, probably

1 well into the 20s, by now.

2 **Q.** Have you given testimony on behalf of government
3 agencies?

4 **A.** Yes, for the federal trade commission, so the other
5 antitrust agency. I testified on behalf of the FTC in
6 opposition to the Sysco/US Food distribution merger that was
7 blocked by the Court. I've been hired a couple of other
8 times by the FTC to do expert reports. Those cases didn't
9 ultimately go to trial.

10 MR. WALL: Okay. Your Honor, we would proffer
11 Dr. Israel as an expert in economics, including industrial
12 organization and econometrics.

13 MR. DOIDGE: No objection.

14 THE COURT: Okay. I find him so qualified.

15 BY MR. WALL:

16 **Q.** Dr. Isreal, could you please describe for your roles with
17 respect to the NEA, including when you first got involved?

18 **A.** So I first got involved with the NEA in the spring of
19 2020. I think it was April of 2020. I always remember it
20 because I had a close COVID contact early in COVID and so I
21 was holed up in a corner of my house, so I can picture when I
22 first started working on it. And early on, I got involved
23 with American and started to learn about the deal, and
24 started to learn about -- you know, study the competitive
25 setting of the deal and so on.

1 **Q.** Were you involved in the DOT and DOJ investigations?

2 **A.** Yeah, particularly with DOJ, somewhat with DOT, but I've
3 certainly -- you know, as I started to do work on the topics
4 that I'll talk about today on the competitive setting, on the
5 nature of the NEA contracts, on the effects of the NEA on
6 output and consumer benefits and so on, I -- you know, I
7 talked to DOJ about those topics. I was on multiple
8 conference, you know, Zooms I think they mostly were at the
9 time, to talk about the NEA with the DOJ.

10 **Q.** Okay. And in turning to the litigation, what is the
11 scope of your testimony in the litigation?

12 **A.** So it -- I mean, I think of it in three buckets, so one
13 is the competitive settings, New York City and Boston as, you
14 know, airline markets or the airline industry in those two
15 cities and what that competitive setting can tell me about an
16 assessment of the NEA's possible or likely effects.

17 Bucket two is a deep dive into the NEA itself, what
18 are the contracts? And as an economist, how do I think about
19 the nature of those contracts. They're, you know, a
20 carefully tailored set of contracts from an alliance between
21 the partners, and I think about what those can tell me as an
22 economist.

23 And then, third, you know, what would have been the
24 effects in terms of what's happened to capacity, what's
25 happened to output? What are the implications on consumers?

1 I should note, it's just a couple of other things
2 as I think about this. As part of that, I've certainly been
3 asked to comment on the work done by Dr. Town and Dr. Miller,
4 so I'll do that. And the way that I think about it in my
5 head, I know I think when we come back, Professor Carlton
6 will also be testifying. And so when I think about my role,
7 what you'll hear from me is more about the output effects of
8 the NEA, and the consumer benefits, whereas I think Professor
9 Carlton will talk more about price effects.

10 **Q.** Okay. Thank you, sir. So we've exchanged some
11 demonstratives and let's --

12 **MR. WALL:** And I think they're in the front of the
13 binder, Your Honor.

14 **BY MR. WALL:**

15 **Q.** But let's put up on the first slide which states "a
16 summary of conclusions" and is this something that you've
17 prepared for that purpose?

18 **A.** Yes.

19 **Q.** Can you take us through it, please?

20 **A.** Yeah. It might take a couple of minutes, but I'll do my
21 best.

22 So these were really the buckets that I just talked
23 about, the three buckets at the top. So the first conclusion
24 and the first area that I'd like to talk about is New York
25 City and Boston as airline markets, or as collections of

1 airline markets if you think about routes as markets. I
2 mean, I've been studying these a long time. I think it's
3 safe to say that they are two of the most competitive airline
4 regions in the world. I think it's worth talking about them
5 separately for a second.

6 So New York City is certainly, in my experience, an
7 airline that's recognized as one of the if not the most
8 competitive airline markets in the world. That largely grows
9 out of the fact that it has two strong hub carriers who
10 operate hubs there. And Delta and United, very few -- I
11 think I heard Dr. Elise say that as well, very few cities can
12 support two hub carriers. When you have two hub carriers --
13 two legacy hubs in direct competition, it's just a very
14 competitive market. And the other thing that does in New
15 York, is New York is also crowded and concentrated with air
16 flights not in the market, but it's concentrated, so it's got
17 a lot of flights, and the other issue in New York is other
18 carriers, you know, struggling to figure out how to compete
19 with Delta and United, because there just aren't that many
20 assets left. There aren't many slots. Delta and United
21 control a lot of the productive assets, and so other carriers
22 have to try to figure out how to deal with that.

23 Boston is a different story, but also competitive
24 and increasingly very competitive. And as we've heard, Delta
25 has now made Boston into a hub as of a few years ago, so we

1 now again we have a city with a hub carrier. A city of
2 Boston's size would almost certainly not have two hub
3 carriers. So then the question -- the airline question
4 becomes how does someone compete with that? And to me,
5 that's -- for purposes of this deal, it's important to -- I
6 see a lot of it as JetBlue, together with American, trying to
7 figure out how to compete with Delta's position in Boston.

8 So that's bucket number one, that those competitive
9 settings, the hub carriers, and thinking about the NEA as an
10 attempt to compete with those hub carriers.

11 So then bucket two is what is the NEA itself? And
12 diving into that in some detail. And the NEA -- so just high
13 level, because I think it's useful to set up what I'll say
14 about that -- as I said, I've spent a long time working on
15 international airline alliances. And so I think a little
16 context is helpful.

17 So international airline alliances grew out of the
18 fact that carriers from different countries, regulatorially,
19 can't merge with each other, but they still have network
20 issues, network connectivity, seamlessness issues to solve.
21 So it grew to this case where they were granted antitrust
22 immunity, they would share revenues, they would plan networks
23 together, in order to be able to, say, bring together the
24 British Airways network and the American Airlines network,
25 for example. So that was sort of an alliance -- that was

1 seen in the world as there's mergers here, there's the
2 international alliances.

3 The NEA is fascinating to me as someone who studies
4 airlines. It's one step down in terms of integration. I see
5 it as an attempt to capture what I think of as the core
6 productive part of the JV, work together to plan a
7 competitive network in these markets, have revenue sharing
8 that means that both parties are incentivized to develop the
9 best network that they can, but otherwise, nothing is
10 integrated. There's no pricing integration like in an
11 international alliance, there's no capacity coordination
12 beyond the route planning there. So it's one step further
13 down in the rung. And so I think about -- and I'll talk a
14 lot about what that says and how that leads to a better
15 network, better utilization of scarce assets, and so on.

16 **Q.** Okay. And then the third topic?

17 **A.** Topic three is really following up on the first two.
18 It's the NEA as a way to compete in these markets, so what's
19 happened. Right? We've heard a lot of testimony and I've
20 read a lot of documents, where the goal of the NEA or the
21 structure of the NEA was to facilitate growth and to
22 facilitate competition. So the third topic will be as that
23 actually -- you know, what was planned and what has happened.
24 And what I find is the plans were all about growth, growing
25 capacity, growing output, and it's working so far. Output is

1 growing in that way, and it's working in terms of creating
2 competition in these two markets.

3 You know, JetBlue is now a stronger competitor for
4 Delta and Boston, by having, you know, more gates and access
5 to the American network. So that gives a real chance to put
6 competitive pressure on the hub carrier, which is hard to do.
7 You know, New York now has JetBlue as a stronger competitor
8 at LaGuardia, in particular. American has really developed a
9 third true long-haul hub in New York. So New York was
10 already competitive with two and now it becomes a very rare
11 city that seems to have three competing hubs. So it's
12 really -- it seems to be working.

13 **Q.** And the last point seems a little different. What's
14 that?

15 **A.** Yes, well, I had my three main buckets of my conclusions,
16 and the last point, as I said, my -- the other part of my job
17 is to review what's been done by plaintiffs, by DOJ, and by
18 experts. And what I find is that nothing that I'm saying
19 above has been refuted, in the sense that, you know, on the
20 first bucket, on the airline markets, you know, what I've
21 seen is sort of an attempt to eliminate United as a
22 competitor by taking Newark out of the market, by not paying
23 enough attention to the intense competition from Delta in
24 Boston. So I'm not really grappling with how much
25 competition there is in those two markets. Not analyzing --

1 As I said, the NEA is really two steps down in the
2 history from a merger, but I've seen analysis of the NEA as
3 though it's a merger, when sort of my work and many others,
4 the focus is that alliances are distinctly different from
5 mergers and need to be analyzed as such. And then, you know,
6 it's working so far and it's generating capacity growth and
7 traffic growth and better competition. And yet I've
8 explosively heard from plaintiffs that they're not looking at
9 those current effects. So to me, that's the most troubling
10 part, because I see this as an innovation, and interesting
11 and -- I think procompetitive, but an intriguing attempt to
12 bring more competition to these markets, to take the alliance
13 idea and apply it in a competitive way. And it seems to me
14 to be working very well, but I haven't heard plaintiffs take
15 on what's actually happening.

16 **Q.** Okay. Let's turn to your first point about the market
17 setting in which the NEA takes place. And just ground us in
18 why is it important to take the market setting into account.

19 **A.** I mean, it's what we do as competition economists, as
20 antitrust economists. It all starts with the market setting.
21 So you need to -- I mean, we're going to ask questions like
22 can the NEA create market power that you need to understand
23 the competitors. We're going to ask questions like what is
24 the NEA doing to competition? You need to understand the
25 position -- who is in the market, who is being competed with,

1 and the relative positions of the players in order to do that
2 competition analysis.

3 **Q.** So what do you mean by market power in the present
4 conference?

5 **A.** I believe I've heard others testify and I agree with the
6 other economists at the high level. Economists just define
7 "market power" as the ability to raise price above -- for
8 profitably raise price about the competitive level. What is
9 the competitive level? It can be a long discussion,
10 economists think about it as basically pricing and economic
11 costs. But generally it's the ability to raise price above
12 the competitive level. In the present context, I think it's
13 important to -- what does that mean? You know, you've heard
14 a lot in here about the importance of capacity in airline
15 markets. It certainly is the main driver of competition, how
16 much supply is there. So the market power here I would
17 define is the ability for a carrier or carriers to pull back
18 capacity, to pull back supply, to restrict output with the
19 effect of raising price.

20 **Q.** Can we put up your next demonstrative on market power.
21 What's being shown here both in the top half and the lower
22 half of the chart?

23 **A.** So the top half is a quote from the FTC and DOJ
24 collaboration guidelines. That's just -- my focus, really,
25 is the sort of the flowchart there at the bottom for how I

1 think about market power and how I approach it here or would
2 in any case. So I start -- as it says on the left, I would
3 start with competitive conditions at the start of the NEA, so
4 what did competition look like in Boston and New York. And
5 then the hypothesis on the table, which is a hypothesis one
6 can state is, you know, we're asking could American and
7 JetBlue collaborate to restrict capacity? Can they pull back
8 on output, create scarcity, and drive up prices. Right? And
9 then it sort of splits into two potential answers. One is,
10 you know, if they have a large share of the capacity, if they
11 don't face a lot of competitive constraints, if their rivals
12 are limited in the ability to respond, then perhaps they have
13 the ability to do that profitably. But if -- and where I
14 come out here and I'm previewing what I said before, if
15 there's a -- if they have a modest share of capacity, a
16 weaker position, there are strong competitive constraints
17 from others, if rivals can expand, and quickly expand into
18 markets, then they don't have that power. And the key thing
19 here is in that bottom bucket, if American and JetBlue try to
20 pull back on output, that's just going to cede share to their
21 rivals, it's not going to result in a profitable ability to
22 raise price.

23 **Q.** Of course, the plaintiffs say that American and JetBlue
24 will be able to exercise market power because of the NEA.
25 What is your answer to that?

1 **A.** Well, I strongly disagree in these markets. And again,
2 to your earlier question, this is why it's so important to
3 put yourself in the market setting. And I think it's very
4 important to take a minute and think about what I think is
5 the key feature of these markets, and I emphasized earlier,
6 as someone who studies airlines, it's that these markets have
7 two strong hub carriers in the case of New York and an
8 increasingly strong hub carrier in the case of Boston. So
9 why does that matter to me so much? Hubs -- for legacy
10 carriers, hubs are the way they operate. Right? Hubs are
11 the epicenter, where they bring all of the demand for every
12 city through the hub and back out of the hub. So if you're a
13 hub carrier, you have -- you have this epicenter in New York
14 or Boston for the hub carriers, where they can run spokes out
15 to most any city they want, and they have the benefit of, if
16 they're going to go serve in Omaha, they bring all of the
17 demand from everywhere else through the hub, and then take it
18 back out to Omaha. So it gives them this ability to serve
19 almost any route that they choose and it makes them very
20 strong in those markets.

21 And honestly, if I was going to summarize much of
22 the economic literature on airline over the last many years,
23 it would be -- the question is how does somebody else compete
24 with the hub carrier? I've never seen it be some
25 ^ nonhub ^ ONE WORD BELOW/BE CONSISTENT non-hub carrier

1 potentially having market power. I've seen it be what can we
2 do to try to compete with that hub position? Now, in New
3 York, they have the benefit of two hubs, they compete with
4 each other. But in Boston, the question is what can you do
5 to compete with Delta's hub now. But in no case, given what
6 those hub carriers can do, can I imagine a non-hub carrier
7 having the ability to pull back out, though, without ceding
8 share to the hub carrier.

9 **Q.** Okay. Now, you mentioned United Airlines is one of the
10 hub carriers in New York City, but of course, plaintiffs
11 claim that United's hub in Newark is not in the relevant
12 market. What is your response to that?

13 **A.** I don't understand that argument at all. I mean, again,
14 the defining feature of New York as an airline or a set of
15 airline markets in New York to me is that it has competition
16 between strong hub carriers. All right. So again, sometimes
17 when we do antitrust market, who obviously is in the market
18 can be a fairly obvious answer. Sometimes it's complicated
19 on the edges. But for the question of who -- you know, who's
20 in the market in New York, you know, I just -- given the way
21 airline competition works and what I just said, you just
22 can't leave out United's hub in Newark. And I think an issue
23 where I just disagree with the approach that, you know, that
24 Dr. Miller and others have used, is it's not an abstract
25 question regarding complicated tests about is Newark

1 generically in the market? Right?

2 The core question is, is United's hub in Newark in
3 the market. Can we analyze competition in New York and leave
4 out United's hub? And to me, that's obviously not doable.
5 You're leaving out one of the two most important competitors
6 in the marketplace.

7 **Q.** So Dr. Miller keeps saying that you need to go through
8 this exercise of imagining a price increase at LaGuardia and
9 JFK, and asking whether competition from airlines at Newark
10 would constrain it. Is that right?

11 **A.** Well, I don't see why you need to do that to decide that
12 one of the two hub carriers is in the market. I mean,
13 sometimes we economists can make things more complicated than
14 we need to be. I mean, I don't have to run a test to know
15 that Pepsi and Coke compete in the soft drink market. I
16 think two hub carriers in New York is a very similar
17 question. The guidelines clearly describe a hypothetical
18 monopolist test, and I'm not objecting to that as a frame
19 work that we use to think about market definition. And
20 sometimes if you have a case on the edge, you have to go
21 through and do that test. In airlines, we have this world of
22 data, of competition happening every day, people reacting to
23 each other every day, assessing the market every day. And
24 again, if you have a hub carrier at Newark, they're part of
25 the market. I would never define market -- if I went through

1 a complicated method that told me a hub carrier in New York
2 was not part of the market, I would be certain my method was
3 wrong.

4 **Q.** Okay. So if we go forward to the next part of the
5 demonstrative, this is a collection of some documents that
6 Judge Sorokin has seen over the last few weeks. That are
7 American and NEA planning documents. What significance do
8 these have with respect to market definition?

9 **A.** So for me, the whole time that I'm doing market
10 definition, and again, thinking about the merger guidelines,
11 all the tests -- the question that we're trying to get to is
12 who do we have to think about for the answer of whether
13 there's market power, or what -- what competitors do we have
14 to include that are importantly constraining the behavior
15 that we're studying in the case? So here, it's what
16 competitors do we have to think about who are the important
17 competitive constraints on what the NEA will do. Right?
18 We're all here to talk about will the NEA create growth?
19 Will it create harm? To answer that question, we have to
20 decide who is the important competitors for the NEA. One
21 way -- perhaps to me, is the most important way to do that is
22 to go to the documents and see who the NEA carriers think are
23 the important competitors? What's driving them to grow and
24 to compete effectively with the NEA? There's a whole long
25 history of documents in the record about American in

1 particular, both carriers, but certainly American being very
2 focused on competing with United. There's a long history of
3 those. Those are a few documents that were done, you know,
4 leading up to the NEA itself, where the focus is, in the
5 titles and beyond is -- -- it's a question that I asked
6 earlier, how do we figure out how to compete with these two
7 hub carriers? And so that tells me that the answer to how is
8 the NEA going to compete? Is it going to compete more or is
9 it going to try to restrict output? That has to include the
10 two hub carriers who are the focus of the competitive effort.

11 **Q.** Okay. Without taking a lot of time to go through them,
12 there have been various other documents in the record that
13 talk about the reactions of other airlines to the NEA, which
14 make various references to United. What do those indicate to
15 you with respect to market definition?

16 **A.** I mean, I think they all reach the same place, which
17 is -- I've been trying to go through the record carefully and
18 listen carefully, and every assessment that I've seen from
19 other carriers says this is -- the NEA is an attempt, they
20 have various views on how successful it will be, maybe, but
21 an attempt by American and JetBlue to compete more
22 effectively with Delta and United. And it seems to me,
23 again, the universal reaction that this is, in large part,
24 competition with United in Newark.

25 **Q.** Dr. Miller says that he has conducted Hypothetical

1 Monopolist Tests that show a New York City market that
2 exclude Newark. How does such tests fit into your overall --
3 how does his so-called Hypothetical Monopolist Tests fit into
4 your overall assessment of the relevant markets in this case?

5 **A.** They don't affect it -- they don't change my view. But
6 that's because I don't -- in my view, he has not done a
7 Hypothetical Monopolist Test of any reliability or validity.
8 And I want to make this point clear is that I don't want to,
9 you know, express to Your Honor that there's my view versus
10 the Hypothetical Monopolist Test and you sort of have to
11 decide between Israel's view and the Hypothetical Monopolist
12 Test. To me, those come out in the same place about what a
13 hypothetical monopolist can do. So I'm not saying reject the
14 Hypothetical Monopolist Test as a construct, I'm saying that
15 here the market definition is pretty obvious and the tests
16 that Dr. Miller has put up against it are just flawed tests.

17 **Q.** Well, the first one that he says is a Hypothetical
18 Monopolist Test is his analysis of the effects after the
19 grounding of the 737 MAX fleet. And as you know, the
20 argument is that prices increased at JFK and LaGuardia. What
21 is your response to that with regard to market definition?

22 **A.** Yeah, I don't see how it's a market definition test,
23 certainly, a JFK and LaGuardia market definition test at all.
24 Just, if we take a step back, the question was, when the 737
25 MAX was grounded, did -- and they took some capacity out of

1 the market, did prices go up? The answer is obviously yes,
2 when capacity come out of the market, prices go up. But I
3 don't -- it doesn't tell me anything about what the contours
4 of that market are. It just tells me when capacity comes out
5 of some market, then prices go up.

6 **Q.** Is there a principle within the Hypothetical Monopolist
7 Test of holding prices outside the candidate market constant?

8 **A.** Yes. So that's getting into it in a little more detail.
9 The really fundamental problem with that as a Hypothetical
10 Monopolist Test is if the 737 MAX capacity came out, prices
11 went up at JFK and LaGuardia. All right. If you try to turn
12 that into a Hypothetical Monopolist Test, the only way you
13 can even try is if prices were constant at Newark. Because
14 then you might say, well, prices came up at JFK and
15 LaGuardia, prices didn't move at Newark, maybe that tells me
16 Newark is a separate market. But, in fact, when the MAX was
17 grounded, prices came up at Newark every bit as much or more
18 than it came up at JFK and LaGuardia. In fact those
19 prices -- route by route, those prices moved together. Some
20 of that is probably because Southwest -- I think you've heard
21 some of this, Southwest Airlines was flying out of Newark at
22 the time and Southwest Airlines had the largest 737 MAX fleet
23 in the country, so it also affected Newark. But bottom
24 lines, the merger guidelines tell you if you're going to do a
25 Hypothetical Monopolist Test, you have to hold prices

1 constant outside the market you're testing. This test did
2 anything but.

3 **Q.** So what is your answer to the merger simulation version
4 of what Dr. Miller calls a Hypothetical Monopolist Test?

5 **A.** So I think he spent a lot more time on that one. And
6 ultimately, what does he show? The merger simulation doesn't
7 test substitution between the airports directly. The merger
8 simulation effectively does what he's saying its name is. It
9 simulates merging together all of the services at JFK and
10 LaGuardia, and then it asks: Does the model find that prices
11 go up by at least five or ten percent?

12 Now, we sort of knew the answer to that coming in,
13 right? Because we see that that model generates enormous
14 price predictions just from a merger of JetBlue and American.
15 Unbelievably large ones in my view. So of course it was
16 going to find a more than five percent price increaser if you
17 merged everything together at those airports. Right? But
18 that's a statement of the unreasonableness of the price
19 predictions that come out of that model. It just gets very
20 large price predictions.

21 I even noticed Professor Miller eventually said
22 those price predictions, maybe don't take them exactly
23 seriously -- I don't want to put words in his mouth -- but
24 something like they're directional. But if now we're just
25 saying they're directional, they can't tell me whether

1 they'll be a SSNIP or not. We're seeing that the model can't
2 accurately predict price increases.

3 **Q.** Now, you have conducted an analysis of applying
4 Dr. Miller's simulation model to the previous United -- US
5 Airways/American Airlines merger, right?

6 **A.** Yes.

7 **Q.** Let's look at demonstrative slide 4. Can you take the
8 Court through what you've done here?

9 **A.** This takes Professor Miller's model, takes the data back
10 to the time of the USA Airways/American merger, and it says
11 if you had used his model and tried to predict the outcomes
12 of that merger, what would you have predicted for prices on
13 the overlaps.

14 So the list on the left-hand side here is the
15 nonstop overlaps in that merger, and then the first column
16 here tells you what Professor Miller's model would have
17 predicted for fares. So all double-digit fare increases,
18 some of them well into the 30 percents. And then the right
19 hand, the final column tells you they would have predicted
20 enormous declines in passengers.

21 So if you would just have taken the same tool, gone
22 back in time, applied it to that merger, you would have come
23 here and said it's going to lead too double-digit, up to 37
24 percent, fare increases on the overlaps.

25 **Q.** So just looking at Charlotte/Dallas-Fort Worth, the

1 37 percent predicted fare increase is accompanied by a
2 29 percent reduction in passenger count?

3 **A.** Right. So going into that merger, Charlotte was a
4 US Airways hub, I think the largest US Airways hub. Dallas
5 is the largest American hub. It was clearly an overlap, with
6 few other competitors -- I don't remember the exact number.
7 So the model predicted this very large price increase and an
8 enormous reduction in traffic.

9 **Q.** And that relationship between the higher fare and the
10 reduction in passengers, that's that restriction of supply to
11 create the increase in price that you were talking about?

12 **A.** Yeah. They're flip sides of the same coin here; prices
13 go up, and output goes down. But, yeah, this isn't like a
14 price increase because of the higher quality. This is
15 predicting a market power based price increase associated
16 with a reduction in output.

17 **Q.** So what actually happened on those routes?

18 **A.** Prices -- in my research -- and I actually think research
19 by Dr. Town and others finds the same thing about this
20 merger. Prices went down, and output went up. I don't think
21 it's really been abutted to any question about this merger,
22 that there was a substantial reduction in fares on the
23 overlaps and a substantial increase in output. So this is a
24 direct test of Professor Miller's model, ability to predict
25 what happens in mergers, and it gets them completely wrong,

1 right?

2 And again, remember, the Hypothetical Monopolist
3 Test that he's running is a giant merger. He's saying merge
4 together all of the carriers at LaGuardia and JFK. That's
5 what he's testing. So if his model can't predict merger
6 outcomes, it can't give you an accurate hypothetical
7 monopolist answer.

8 **Q.** Okay. Thank you.

9 Moving forward, there's been a lot of discussion in
10 the case about whether competition from Newark flights is
11 adequately accounted for in Dr. Miller's model, because
12 Newark is part of this thing called the outside good.

13 What is your response to that?

14 **A.** To apologize, because I'm going to have to get technical
15 for a second. The outside good -- I wouldn't have expected
16 to spend this much time on the outside good in a setting like
17 this. I think it's worth stepping back. And I've run a lot
18 of these models and asking what the outside good really is in
19 these models and in his model in particular. Because I think
20 he's been very clear, and he was very up front that the way
21 substitution to Newark is being handled is that it's in the
22 outside good. And he said the outside good captures Newark,
23 and more. So obviously it captures the relevant -- in his
24 view, he thought it captured the relevant substitution
25 outside his client market.

1 There's two things that I want to point out about
2 the outside good that made -- that statement is just
3 incorrect in my view. Number one -- and I don't think this
4 came through before. Number one, the outside good is not
5 something -- I mean, when you talk about it that way, it
6 sounds like the outside good is another good that's somehow
7 being measured; that somehow we have data on who flies from
8 JFK, we have data on who flies from LaGuardia. It makes it
9 sounds like we have data on who's taking the outside good.
10 But we don't know anything about who is taking the -- the
11 outside good is everyone who chose not to fly, whatever they
12 chose to do. We don't have any idea how many people that is.

13 What his model actually does is it forms an
14 estimate of the total market size on a given route. And that
15 estimate of the total -- so say the route is New York to
16 Charlotte, the estimate of the market size that the model
17 uses is something called the geometric mean, basically the
18 average of the population in New York and Charlotte. He says
19 that's the total market size. It's basically the average of
20 the two populations.

21 And then the way he computes the outside good is he
22 just takes that market size, he subtracts out how many people
23 actually flew, and he said everybody else didn't fly so
24 they're the outside good. But he has no idea how many people
25 were thinking about flying, how many people were making any

1 sort of a decision like that.

2 So point one is you can't say you're measuring
3 substitution to a good, when you can't even measure its size.
4 It's really just a catchall/other in the model. He has no
5 idea how many people substitute to the outside good, and thus
6 no ability to say how good a substitute it is or not.

7 And the second point, just to stay technical for a
8 minute, and I think even more telling -- and I'm not sure
9 this has come through here. Professor Miller, he runs -- his
10 model is a national model. It's a national model of air
11 travel. Okay? So it includes all airports and travel out of
12 all airports. There's only one parameter in his model that
13 guides substitution to the outside good. He has one
14 parameter that says how good a substitute is for the outside
15 good. That parameter is the same parameter for Salt Lake
16 City, Utah, Kansas City, Missouri, as it is for New York. So
17 the fact that there's no good airports around Salt Lake City
18 or Kansas City is influencing his estimate of -- maybe how
19 good the outside good is. He has one parameter that covers
20 all airports. So he has literally no parameter in his model
21 that tells you about substitution in and out of New York.

22 All right. And apparently the last thing I'll say
23 here is apparently you realize that because in his report, he
24 says that he did try to run models that were specific to New
25 York and Boston. Right? But his report says that when he

1 tried to do that, those models failed something called the
2 weak instruments test. They failed the econometric test that
3 meant they weren't reliable, so he doesn't use them. So his
4 New York specific model failed this test, so he's using a
5 nationwide model, and this has literally no ability to say
6 anything specific about substitution in the New York
7 airports.

8 **Q.** There was some testimony in the case, in Dr. Miller's
9 cross-examination, about something that you extracted from
10 one of his work papers in which he actually had treated
11 Newark the same way that he treats LaGuardia and JFK. I want
12 to pull that up. It is -- it was a -- actually, I'm not
13 sure -- how we are identifying this. Exhibit 25
14 demonstrative. Why don't you just say what's on this screen
15 and how you did this?

16 **A.** Yeah. Well, I mean, I literally did nothing here, except
17 put it on a page, I guess. This is -- it came out of
18 Professor Miller's backup. So he did run something in what
19 he's called his work paper 4, where he put Newark into the
20 New York market, as I think he should, and I think your
21 question, Mr. Wall, was right that he just -- he put in it in
22 and like he put in JFK and LaGuardia. And so the numbers on
23 the right hand there are what he got for price increases for
24 American and JetBlue in particular, and for all products when
25 he did that.

1 What I would point out is that they are -- this is
2 now -- we're off the Hypothetical Monopolist Test, just to be
3 clear, this is for this transaction, treating it like a
4 merger, but it's just illustrating how much difference Newark
5 makes for this transaction, if you were to simulate it like a
6 merger.

7 And what you find there on the right-hand side is,
8 you know, much smaller price increases for American and
9 JetBlue and certainly overall then you get if you don't
10 include Newark. And just to put these in a little context,
11 because you probably don't look at numbers like this, or
12 these models all the time, every merger simulation model gets
13 positive price increases. These models are built to only
14 measure upward pricing pressure. You can't get a negative
15 number, zero is the bottom, unless you build in some
16 efficiencies or something, which he has not done. It's
17 pretty common in my work to think about if you're getting
18 numbers smaller than 5 percent, a lot of us use that as kind
19 of a guide, if it's below five percent, it's near zero.
20 Usually we would say that doesn't give you any concern. It's
21 pretty commonly done. So if you add Newark, most of these
22 are getting under the 5 percent level. The one that's much
23 bigger is Newark-Martha's Vineyard, a seasonal route, but if
24 you look at seasonal routes, on the whole, they're below five
25 percent.

1 Q. Thank you, sir.

2 MR. DOIDGE: Your Honor -- can you just clarify
3 whether the reflects the corrected numbers or not?

4 THE WITNESS: I mean, I can clarify in the sense
5 that the correction had no effect on percentage price
6 changes, so these would all be -- correct for the percentage
7 that -- for the --

8 BY MR. WALL:

9 Q. Can you explain that, this whole bit about the corrected
10 numbers, what the correction was, and how it reflects the
11 results of things like this?

12 A. I'll try. I'm not sure I am going to get every detail
13 just right, but I'm going to give you the basics. The
14 correction was basically if you figure out how big the price
15 change was from before and after and you figure out the
16 percentage, you have to figure out effectively what to
17 multiply that by, so what's the right base, I think, for how
18 big the total number, total dollar number would be. And I
19 don't remember precisely. I know there was a change from
20 what his first report was to a second report, in terms of
21 what he multiplied by, so that the total dollar number got
22 bigger. But that did not affect either the price change in
23 dollars, in prices, or in percentages. So all of these
24 percentages would still be correct.

25 Q. So between the original and the corrected version, the

1 percentages still hold?

2 **A.** The price changes hold. The percentage price changes
3 hold. It's just the total dollar value associated with those
4 percentage price changes came down. And that's where I'm
5 just not remembering exactly what he changed, but it had no
6 effect on the percentages.

7 **Q.** Okay. So they -- let's be clear. Because the changes is
8 to the column that's called, "Per pre-NEA passengers," right?

9 **A.** I believe that's what changed as a result of the
10 correction.

11 **Q.** But the estimate, overall harm, doesn't change, right?

12 **A.** I believe that's correct, but there -- what I'm certain
13 of as I sit here, is that the percentage price changes, the
14 numbers that I was just talking about and that are in the
15 square there, do not change.

16 **Q.** Okay. All right. So moving on from this, I want to ask
17 you about another part of the market definition principles
18 from the merger guidelines that sometimes refer to as the
19 "circle principle." Could you explain what that is?

20 **A.** Sure. So this -- the way to think about the circle
21 principle, it is in the merger guidelines. It's the
22 Hypothetical Monopolist Test is one standard. This is an
23 additional standard. So, again, it's not an alternative.
24 It's something else that markets should meet to be valid.
25 And basically what the circle principle -- what it says in a

1 nutshell is, if you define a market, you shouldn't skip over
2 close competitors. So the technical way it says is if you
3 have any products included in the market, you should include
4 anything else that's a closer substitute for the parties than
5 the stuff that you include. So let me just say that more
6 concretely for what that means in practice.

7 What that means in practice is the way that you
8 should build markets is to start with one of the products
9 that's effected, say an American flight, and then you should
10 build your market out. You should go to the next closest
11 competitor, and then the next closest competitor, until you
12 have enough to be a market. You shouldn't -- so if you were
13 building a market for soft drinks and to use my herbal tea as
14 an example, you might start with Coke. You shouldn't skip
15 over Pepsi, and then go to Dr. Pepper and everything else.
16 Right?

17 If you do that, what happens, and the guidelines
18 are worried about this, you might skip over Pepsi, and merge
19 everything else together, Dr. Pepper and Orange Crush, and
20 whatever drinks there are, and you might run a merger
21 simulation and find I got a SSNIP, because I merged so many
22 things together. Circle principle says you can't skip Pepsi.
23 Pepsi is the closest competitor.

24 **Q.** Okay. And so what would be the application of the circle
25 principle to this case?

1 **A.** The way you would do it -- the way I would do it is I
2 would start with a product, that's what the guidelines say,
3 start with the product sold by the merging parties, so a
4 flight out of JFK, say, taking an American flight out of JFK,
5 and I would build out from there to who is the closest
6 competitor. And what you're going to find from an American
7 flight, for sure, is the closest competitor is probably Delta
8 at LaGuardia, and the next closets competitor is United in
9 Newark. Those are the hub carriers. You don't skip over
10 them. Even if you can run a model that gets a big price
11 increase, you don't skip over the closest competitor.

12 Another way to say it is, and I say it this way in
13 my report, if you think about Professor Miller's market
14 definition, it's all the flights at LaGuardia and JFK.
15 Right? That includes connecting service, includes flights by
16 little airlines like Frontier. It leaves out United at
17 Newark. And so what's included in this market is including a
18 bunch of distant substitutes like a connecting product, and
19 excluding a closer substitute, thus, explosively violating
20 the circle principle.

21 **Q.** One last question about market definition and we'll move
22 on.

23 Do Dr. Miller's results establish the cohort of
24 LaGuardia and JFK as the only New York market possibility
25 that passes the Hypothetical Monopolist Test?

1 **A.** No. And that's another thing that's worth noting about.
2 There's a lot of talk about the Hypothetical Monopolist Test
3 in this case as though it somehow proves the market, but it
4 doesn't. If you run Dr. Miller's Hypothetical Monopolist
5 Test the way he ran it, it would -- for almost all routes, it
6 would say LaGuardia alone passes the test. It would say --
7 basically, if you take those three airports and take any
8 combination of them, LaGuardia alone, LaGuardia plus JFK,
9 LaGuardia plus Newark, all three, those combinations, they
10 all pass the test. So the Hypothetical Monopolist Test is
11 not telling us which of those market is correct, it's saying
12 they all pass the test, frankly, because the model gets giant
13 price increases, so pretty much everything passes the test.

14 **Q.** Okay. Let's look at the next demonstrative. This is the
15 calculation that you did with regard to the LaGuardia routes,
16 correct?

17 **A.** Yes.

18 **Q.** And can you explain it to the Court?

19 **A.** Yes. I just took Professor Miller's model, ran the
20 Hypothetical Monopolist Test using his model, as though it
21 was just for LaGuardia. And what you find is 92 percent at
22 the 5 percent level, 86 percent, even if you go to the
23 10 percent level, the vast, vast majority of routes pass the
24 Hypothetical Monopolist Test just for LaGuardia.

25 So again, when I see this, I say, hey, this test

1 can't distinguish between -- we're trying to decide what
2 airports are in and what airports are out. The test is
3 literally uninformative because every airport passes. So
4 then the decision about what you include comes down to a
5 judgement call. Professor Miller is deciding go beyond
6 LaGuardia and include JFK. That brings in more JetBlue
7 competition, but he's leaving out Newark, leaving out the hub
8 carrier. The Hypothetical Monopolist Test cannot support
9 that, because the market with Newark passes. The market
10 without JFK also passes. It comes down to this question that
11 I was asking earlier about what's the right way to illuminate
12 the competitive effects? Professor Miller said that, too,
13 and my conclusion is you cannot possibly eliminate the
14 competitive effects of an airline transaction in New York and
15 leave out one of the two major hub carriers by leaving out
16 Newark.

17 **Q.** Thank you, sir. Just as a small technical point, on the
18 slide here, we have one of our favorite acronyms in
19 antitrust, the SSNIP, S-S-N-I-P. Could you just, for the
20 record, state what that means?

21 **A.** Yeah, I always forget. I think it's a small but
22 significant nontransitory increase in price.

23 **Q.** Okay.

24 **A.** But that's -- basically, what that just means --
25 Professor Miller said it, too. If you merge together

1 everything in your market that you're proposing, so it's a
2 giant merger, would that hypothetical monopolist that you've
3 created, that giant new firm, would it raise prices by at
4 least five percent above the current level.

5 **Q.** Okay. So I want to return, then, to our evaluation of
6 the market conditions in these areas. And we'll start with
7 New York City and then turn to Boston a little later, so
8 you've got a lot of data to present on this. Let's start
9 with slide 6 of your demonstrative, which the Court has seen
10 before in the opening statement and otherwise. So this is
11 something that you and your team prepared?

12 **A.** Yeah, so this uses the Department of Transportation's
13 DB1B. I think you've heard those letters during the trial.
14 It's just data on traffic. These are passengers originated
15 in New York starting in 2014, and you just see the decline of
16 JetBlue and American. So it's all relative to 2014. So
17 relative to 2014, by 2019. So just prior to COVID and to
18 then the NEA. JetBlue and American had -- you know, their
19 share had fallen by two to three points, while United and
20 Delta had gone up by three to four points.

21 **Q.** All of that being indexed to a 2014 starting point?

22 **A.** Correct. So zero is just where they were -- it's changes
23 relative to 2014.

24 THE COURT: Market share changes.

25 THE WITNESS: Market share changes.

1 THE COURT: Of New York originating passengers at
2 one of those three New York airports.

3 THE WITNESS: Correct. So, you're right. These
4 are New York originating, so people who start their journey
5 in New York. And these data will let you compute what
6 percentage of the passengers flew on these four carriers.

7 BY MR. WALL:

8 Q. Okay. We're going to drill down a little bit deeper into
9 that in a moment. But for now, let's go to the next chart,
10 which is entitled "New York Daily Seats Bi-Directional Total
11 in Thousands." What have you done here?

12 A. Again, these are seat data, so they come from the OAG,
13 which is the schedule data on the seats that are flown.

14 Q. "OAG" is the Official Airline Guide?

15 A. Correct. You can just get all of the schedules, what
16 kind of plane was it, when did it fly, what day. So you can
17 add up all the seats that fly.

18 And this is bi-directional, so these are daily
19 seats. So the American says, per day, on average, American
20 had 62,000 seats from those three New York City airports.
21 JetBlue had 61,000. This is really -- and then Delta had
22 120,000, United had 113,000.

23 This is really one version of the picture of why
24 it's hard to compete against a hub carrier, because the hub
25 carrier just has a lot more activity, a lot more going on in

1 these airports. So JetBlue and American, just in terms of
2 the capacity that they're bringing to the market, are way
3 behind.

4 And frankly, the NEA, like, attempts to compete
5 with hub carriers generally, is an attempt to figure out how
6 do we deal with that? Because as long as we're that much
7 smaller, we're going to lack relevance in that market. I
8 know you've heard that term. So, you know, how do we deal
9 with the fact that Delta and United are so far ahead of us,
10 in terms of the capacity that they bring to market.

11 **Q.** Let's go to the next slide, which is entitled "Nonstop
12 Destinations Served." What have you done here?

13 **A.** Well, so there's more of looking at the same schedule
14 data. This, to me, may be even a more clear picture of the
15 challenges of competing with hub carriers. So this is just
16 measuring the number of places that you can go from New York
17 nonstop. So if you choose American, you can go to 54. If
18 you choose JetBlue, you can go to 61. Delta gets you to 107.
19 United's strength out of Newark, without the perimeter rule,
20 with a little more capacity in Newark, they can get you even
21 more places. They can get you to 125 places.

22 So this is -- as I think I heard Mr. Raja say,
23 which has been my experience in the industry, New Yorkers
24 sort of expect to be able to fly nonstop. You live in New
25 York; you got three airports. You expect to get there

1 nonstop. And the carriers who can get you to far more places
2 nonstop are Delta and United.

3 So if you just think about yourself as a traveler,
4 potentially getting frequent flyer miles, and so on, on a
5 carrier, the hub carrier is just much more attractive because
6 of the number of places they can get you.

7 **Q.** So moving on to the next one, "International Long-Haul
8 Markets." What have you shown here?

9 **A.** So this is the same basic idea, just now we're looking at
10 international long-haul markets to South America, Europe,
11 EMEA, and Asia. So JetBlue has, basically, no international
12 presence, one long-haul market. American has 8. But again,
13 Delta and United are getting to 25 and 35. And again, you
14 see the importance of the strength of United here, because
15 there's no perimeter rule around Newark, and so United's hub
16 presence at Newark lets them to take people to 35
17 international destinations.

18 So again, that's why I was saying earlier, you
19 shouldn't, in the abstract, think that Newark isn't part of
20 the market. It's a very attractive place for people to go.
21 Because they can get on United, they can be loyal to United,
22 and they can go many places around the world.

23 **Q.** Let's move forward. I want to focus on now -- drill down
24 a little deeper on the local and originating shares. You
25 showed the index chart a moment ago. Let's look at table 2

1 of your expert report, which is also marked as Defendants'
2 Exhibit 9-1-2. And we'll blow that up, and I'll ask you to
3 tell me what you were showing here.

4 **A.** Thanks for the blow-up. I was just telling someone I
5 need new glasses. So now I can actually see it.

6 So this is diving more deeply -- so I mentioned
7 earlier, Your Honor, that the chart we looked at, the sort of
8 jaw chart of shares going in different directions was
9 originating passengers, so people who start in New York.
10 This is breaking those passenger shares down over time. And
11 there's the total passengers, then there's the originating
12 passengers who start in New York, and then there's the
13 destination passengers who start somewhere else.

14 And so I think what's worth focusing -- the first
15 thing you see on this chart is you see that, again, American
16 and JetBlue declining, while Delta and United get stronger by
17 each of these metrics. So that's pretty clear. But I think
18 what gets interesting is when you look at local origin and
19 local destination and contrast them.

20 So for local origin, American is really quite weak.
21 I think there's been testimony about American's lack of
22 relevance in the New York City area means that it just really
23 struggles to attract New Yorkers. Right. So we've seen
24 American has declined from 16-and-a-half percent in 2014, to
25 13.1 percent in 2019. So by 2019, American is way less than

1 half the size of Delta and United in terms of origin
2 passengers. Right. So this is one of the three legacy
3 carriers, but here in New York -- or in New York, it just
4 can't compete for New Yorkers at any reasonable level with
5 Delta and United.

6 For destination passengers, American does somewhat
7 better, still not as well as Delta and United. But this is
8 what we heard in testimony, right, is that American can fight
9 for people, say, from the Midwest, people from Florida, other
10 places where it actually has a presence, some places where it
11 has a hub. Mr. Raja talked about that box in the middle of
12 the country. So American does okay with people outside New
13 York, very poorly with people inside New York, although it's
14 declining on both in New York.

15 The other piece to notice is that JetBlue is
16 reversed. All right. So JetBlue, if you look at destination
17 passengers, JetBlue does very badly. JetBlue shares decline
18 just over 11 percent for destination passengers. So it's not
19 doing very well at picking up people outside of New York.
20 Right? Whereas inside New York, it does, still much smaller
21 than Delta or United but still declining, but somewhat
22 better.

23 And so there's the two points that I would make
24 from this. One is you see the declines in all of these, but
25 two is, this really goes to what the NEA is and why it's so

1 important to dive into these number to think about the NEA.
2 Because American can do pretty well at attracting people from
3 outside of New York. JetBlue can do pretty well at
4 attracting people from inside New York. In the NEA -- I
5 would call those complementary assets or complementary
6 abilities. In the NEA, you now have a network and a sales
7 position and a brand that has the ability to compete for
8 both.

9 Today, normally and Delta and United have the
10 ability to compete for both. If you bring American and
11 JetBlue's networks together in New York and their sales
12 presence together to sell that network by codesharing in New
13 York, you now actually have this complementary network that
14 can be strong both in New York and outside.

15 **Q.** Thank you, sir. If we got forward, there are of course
16 routes where American and JetBlue compete and overlap out of
17 New York City today. Can you put those in perspective for
18 us?

19 **A.** Sure. There is a demonstrative, it might be easier.

20 **Q.** Indeed, there is.

21 **A.** Bring it up. It helps me.

22 **Q.** Why don't we put up slide ten of your demonstrative and
23 you can tell us what you're showing here?

24 **A.** Sure. So there are overlaps. You know, as you just
25 asked in your question, there certainly are nonstop routes

1 that both American and JetBlue serve. I think the things to
2 notice from this picture are they're the minority of routes.
3 Most routes are not overlaps. And then secondly, even those
4 routes that are overlaps tend to have multiple other
5 competitors.

6 So if you just look at the domestic picture, for
7 example, they are 54 nonoverlap domestic routes coming out of
8 these New York airports, as opposed to 20 -- if I'm doing my
9 math right there, 20 overlaps. So most of the routes are not
10 overlaps. Some of the overlaps are relatively heavily
11 trafficked routes so they have more of the share of
12 passengers, but because they're heavily trafficked routes
13 they also attract a lot of competition. So you see like most
14 of them have three or more competitors.

15 **Q.** Is that what one typically sees in the airline industry,
16 there's a relationship between the traffic and the number of
17 competitors?

18 **A.** Yeah. I mean, absolutely. So the routes in the airline
19 industry, where we sometimes think about there potentially
20 being market power, tend to be smaller or it's a only one hub
21 carrier serves, for example, as opposed to the big routes
22 that attract lots of competition. So here we see, basically,
23 every single route has at least two other competitors, right,
24 and then we see that, you know, I think it's 89 percent of
25 the passengers are on routes that are either not overlaps or

1 have three or more competitors. Right? You see those two
2 that are listed there that have one other competitor, those
3 two routes are New York to Martha's Vineyard, and New York to
4 Nantucket, seasonal small seasonal routes that have less
5 competition, but even they're still facing one other
6 competitor.

7 **Q.** And you're leaving out the private jet service that most
8 of those people take?

9 **A.** Well, I guess private jets would be part of the outside
10 good in this case.

11 And one thing that I will note, internationally you
12 see it even more so, almost all nonoverlaps, JetBlue does
13 less internationally. Almost all of the overlaps have lots
14 of competition. One thing I would note is that there's the
15 one route here that is an international overlap with only one
16 other carrier, there's one listed, that's actually New York
17 to Antigua, which actually probably should probably be taken
18 off of this chart, because it's the one carve-out that the
19 parties have added since the NEA started. So originally,
20 there's six carve-outs, they have a procedure that adds more
21 carve-outs that basically involves looking to see if they
22 have fewer other competitors, and that one route there, New
23 York-Antigua has been carved out.

24 THE COURT: So there's 54 non -- I want to make
25 sure I'm reading the chart directly. There's 54 nonoverlap

1 nonstops.

2 THE WITNESS: Correct.

3 THE COURT: Those are nonstop flights from New
4 York, which, at the time, the NEA -- JetBlue and American had
5 service.

6 THE WITNESS: They're nonoverlaps, so they didn't
7 both have service.

8 THE COURT: They didn't both have service. So only
9 one of them served.

10 THE WITNESS: Correct.

11 THE COURT: And of those 54 --

12 THE WITNESS: That's only 37 percent of the people.
13 Those tend to be smaller.

14 THE COURT: Those are only 37 percent of the
15 people. And on those 54, one had four other carriers, 11 had
16 three other --

17 THE WITNESS: So you can add up all the numbers
18 here. So the 54 are nonoverlaps, they're not overlapping
19 with each other at all. The other ones that are above that
20 are overlaps.

21 THE COURT: Oh. I got it. That's the -- so the
22 total number of routes would be the 54 plus one, plus 11,
23 plus 6, plus 2.

24 THE WITNESS: It's 74. It's 54 plus 20.

25 THE COURT: Right. I got it.

1 THE WITNESS: So there's 54 -- the way to think
2 about it is the 54 have no overlap at all, that's no
3 competitive concern. The one has four other carriers, the 11
4 has three other carriers. So it's sort of moving up from not
5 an overlap at all to how many competitors there are.

6 THE COURT: I got it. I understand now. Thank
7 you.

8 BY MR. WALL:

9 **Q.** Just following up with that, Dr. Isreal, is there
10 learning in the economic literature studying the airline
11 industry about the likelihood that somebody would be able to
12 exercise market power on a route that had, as you put it in
13 this chart, three other carriers?

14 **A.** There's been a variety of studies of sort of where we
15 might see fare increases. There tend to be on where you
16 might see a fare increase if somebody exited, so not really a
17 reliance setting. And different people have studied it in
18 different ways, but if there's three other carriers, plus
19 American and JetBlue, even if you counted American and
20 JetBlue as one, which I don't think you should do, but even
21 if you did, that would be four carriers. I haven't seen
22 anything in the literature that would support a problem with
23 fares on a route that had four carriers. Most of the
24 focus -- I don't want to overcharacterize every study, but
25 most of the focus in my life when I talk to regulators has

1 been routes that are going to end up with -- you know, two
2 carriers or one. In a merger, those are called three to twos
3 or two to ones. That's where the vast majority of the focus
4 is.

5 So on here, that would only be the lines that have
6 one other carrier or none. That would take -- one other
7 carrier would mean even if you count American and JetBlue as
8 one thing, there's still two. So those top two rows are
9 where overwhelmingly the attention has been in my career.
10 And again, you have Antigua that's been carved out and you
11 have Martha's Vineyard and Nantucket. Those are the only
12 things in that category.

13 **Q.** Thank you. I want to switch the subject a little bit,
14 just a bit, to barriers to expansion, and what might prevent
15 other carriers from expanding their capacity as the NEA
16 carriers try to restrict capacity. And to begin, I'd like to
17 ask you, is that realistic, with respect to the New York
18 routes, given what we've all heard about the slot
19 constraints?

20 **A.** And I think, I think it's realistic for the two hub
21 carriers. And again, this goes back to what I'm saying about
22 why the hub carriers matter so much. I mean, in general,
23 taking it out of New York for a second, when we think about a
24 hub carrier, they've got the presence at an airport. So
25 they're definitionally on one end, and they're in the

1 business of adding spokes out of their hub because that
2 brings in more demand to their hub. That's what the whole
3 model is about. So in general, hub carriers -- if you think
4 about a given route -- we generally think about a given
5 route, say New York to Charlotte as a market, even if a hub
6 carrier is not serving that route today, or is serving it
7 only a little, they're generally in a position to quickly
8 enter or expand. The merger guidelines have a concept called
9 rapid entrance, which are a firm that can jump into the
10 market quickly without a lot of cost. I mean, I have many
11 times taught hub carriers are a great example of that.

12 If you want to say an individual route is a market,
13 even if a hub carrier is not on it, you've got to respect
14 them as a rapid entrant. So in general, hub carriers have
15 the ability to do that. In New York, the other question
16 might be, you know, we've been saying, and I've been saying
17 that the slots, and so on, are constrained in New York, so
18 can they really do it in New York? United and Delta are the
19 two firms in the position with Delta with a very large slot
20 position at LaGuardia, United at New York, which is not slot
21 constrained, it's schedule -- I forget the term now.

22 **Q.** Facilitated?

23 **A.** Schedule facilitated, so they have to get FAA approval,
24 but they have -- basically, they're able to maintain or add
25 to their number of flights, those are the two carriers in New

1 York that have the ability to do that, because they have
2 these large portfolios. Even if they don't want to move a
3 slot around, they always have the ability to up-gauge. So
4 carriers, if you just think about a hub carrier, you go to
5 Boston now, you think about what Delta is doing there, they
6 just have way more resources in that market, and the ability
7 to respond by shifting around planes and entering new routes.

8 **Q.** We have heard about the DOT mandated slot divestitures.
9 I think you were here earlier today when Mr. Schweinzger was
10 testifying about those. Are they relevant to your assessment
11 of the NEA partner's ability to exercise market power?

12 **A.** Relevant. I mean, in a sense, I guess, yes, but not
13 critical. I mean, because if there hadn't been any slot
14 divestitures, everything else I've said today would have been
15 the same. So these are very competitive markets and
16 certainly a very competitive market in New York in any case.
17 Slot divestitures are kind of icing on the cake, I guess.
18 There are seven slots that are being divested, or are in the
19 process, I think, of being divested. They're being optioned.
20 The FA A is involved in that now. So if you think about
21 market power as the ability to restrict output, that's seven
22 slots of additional output for some other carrier off the top
23 in the NEA. And then we heard testimony, I was here earlier,
24 about if American and JetBlue don't grow enough, they have to
25 give up ten more. And so that goes right to this question,

1 right? If they try to pull back output to exercise market
2 power, they're going to, (a), suffer a big cost for that, ten
3 slot pairs are valuable, and (b), somebody else gets to step
4 in with those slot pairs and directly add additional
5 competition and output to the market.

6 **Q.** There was a suggestion made earlier during Dr. Miller's
7 testimony, I think it was Dr. Miller, it might have been
8 Dr. Town, that it might be possible for American to meet its
9 growth commitment on some New York routes and still restrict
10 output and raise price on other New York routes. Do you have
11 a reaction to that?

12 **A.** I mean, I heard the testimony, I think it was from
13 Dr. Miller, about this idea that maybe you would not grow on
14 the nonstop overlaps, you would just grow on other routes. I
15 mean, I guess I have a couple reactions. One is -- I guess
16 maybe three. One is, you know, that sort of thinking
17 about -- I'm not going to grow here and I'm going to grow
18 there, because I'm trying to somehow evade this or because of
19 some competition from the NEA, to me that's -- it's
20 inconsistent with how airline networks work. You
21 don't add -- in airline networks you add capacity to think
22 about the quality of the overall network. And so it's very
23 hard when planning a network to think I'm going to add on
24 this route but not that route, because I'm trying to evade
25 some competition. Basically, you add capacity where it

1 supports the overall network. Because every plane that you
2 add is serving hundreds of different markets because it also
3 serves connecting traffic. And that leads to my second
4 reaction which is probably the most important, which is, in
5 my study of alliances, I mean, regulators have made this
6 claim before, sure, maybe you will add capacity, but you
7 won't add it on the nonstop overlaps. That's just rejected
8 by the data from international alliances. The nonstop
9 overlaps are important big routes, and when capacity gets
10 added, it gets added to those routes.

11 I mean, if you look at the American/Atlantic Joint
12 Business. Right? Dallas to London is a major nonstop
13 overlap between approximate American and British Airways,
14 it's gotten tons of capacity, because it's important route to
15 the network. But it's just the idea that you don't add
16 capacity on nonstop overlaps is just flatly rejected by the
17 data.

18 And I guess the third thing I would say is, you
19 know, that's also, you know -- I'm a big believer in
20 continuing to study these things and continuing to watch the
21 data. So if that's the behavior that occurs, that will be
22 detectable and we can see what happens -- if this case is the
23 exception to my rule, and nonstop overlaps really do stuffer,
24 then we'll see that, but that's not what I see in the data.

25 **Q.** Thank you. So based upon your overall assessment to the

1 market situation in the -- on the New York City routes, do
2 you see any reasonable prospect that the NEA carriers will be
3 able to exercise market power?

4 **A.** No. I mean, again, it goes back to the beginning. We're
5 talking about two weaker, nonhub carriers exercising market
6 power against two strong hub carriers. My entire career of
7 studying airlines, the question is how do we get these other
8 guys to inject competition? That's what the NEA is trying to
9 do.

10 **Q.** Other guys doing competition against the hub carriers?

11 **A.** Correct. It's never a -- I've just never seen it be a
12 question of when there's a hub carrier of the nonhub carrier
13 is going to exercise market power. The question,
14 overwhelmingly in the literature, is how does the nonhub
15 carrier compete, and how do they bring more competition into
16 the market, not how do they exercise market power?

17 **Q.** Okay. Let's switch over to Boston. And to begin, I'll
18 ask you to take a look at slide 11 from your demonstrative.
19 It's a bunch of squiggly lines. What is being shown here?

20 **A.** Should I give a better explanation of that? I shouldn't
21 just say it's a bunch of squiggly lines.

22 **Q.** Yeah, we need more detail.

23 **A.** Yeah, so this is the -- these are the passenger shares,
24 the same data that we were talking about before, in Boston
25 over time. So you see the range of carriers serving Boston.

1 And I mean, the thing -- the thing that comes most clearly
2 off the page here is Delta. You see Delta's growth from, you
3 know, at the beginning here, roughly 15 percent share, to
4 pushing 30 percent share by 2022. Much of that comes at the
5 expense of American. So you basically Delta comes in, makes
6 Boston a global priority, eventually declares Boston a hub.
7 Once a legacy carrier declares a city like Boston a hub, that
8 legacy carrier becomes very strong in that city. You see the
9 other legacy carrier, American, fading as a result. You also
10 recently see JetBlue and Delta has competed effectively with
11 JetBlue, and JetBlue has faded.

12 I also heard Mr. Hayes testify about operational
13 difficulties that JetBlue has had, which is Boston -- because
14 New York has slot constraints, Boston is the only place that
15 JetBlue can try to address those operational difficulties, so
16 that's probably led to some of the recent decline. But the
17 overall story is Delta's hub taking control in Boston, and
18 again, the others struggling to compete with that.

19 **Q.** Okay. So you've mentioned before that it's not common
20 for a city the size of Boston to have two hub carriers. What
21 are the competitive conditions that, in your mind, are going
22 to create the most competitive intensity in Boston?

23 **A.** I mean it's, I think, a lesson of the airline industry.
24 And Dr. Lee did some of this, so I won't spend too much time
25 on it. The lesson is unless you're in New York and you

1 can -- or Chicago, people in those markets are blessed by
2 having multiple hubs competing with each other. Every other
3 city in the country, the best chance is to have a strong LCC
4 come in. I mean, that's the model. That's been my focus in
5 the airline industry. How do you have hub carriers
6 generating the benefits they do because they serve so many
7 markets, but still have competition with those hub carriers?
8 The answer has been LCCs with a different business model,
9 with a point to point business model are able to come in and
10 inject competition. So in the case of Boston, to me, the
11 fundamental -- it comes down to if we want competition with
12 Delta, that's going to come from JetBlue, and JetBlue needs
13 to have the resources to do that.

14 **Q.** Okay. Let's just delve a little bit into what the record
15 shows about Delta's ambitions in Boston. I want to pull up
16 DX259.

17 Your Honor, this is a document that has been marked
18 confidential by Delta. We have received permission to
19 publish the one page that I'm going to refer to, page 7. And
20 so that can be put up on the screen.

21 THE COURT: Okay.

22 BY MR. WALL:

23 **Q.** Okay. You're familiar with this?

24 **A.** Yes.

25 **Q.** This is part of a Delta strategy, a broader Delta

1 strategy document, but this page is entitled, "Delta is
2 staking claim as number one global network carrier in
3 Boston."

4 What about this do you find significant with
5 respect to Delta's ambitions?

6 **A.** I mean, at a high level, it says what I was just saying,
7 which is that Delta is targeting Boston. Delta is noticing
8 right at the top that Boston was the largest non-hub city, so
9 there was an opportunity for somebody to come make it a hub,
10 which is what Delta has done since. I guess that's number
11 one.

12 Number two, you see Delta sort of coming directly
13 after JetBlue in competition. So you see a reference to
14 JetBlue's margins on the top and as a target for competition.

15 **Q.** Focus right in to that part of it here and the
16 line, "Large Latin and Florida leisure markets."

17 **A.** Right. So there was a reference to JetBlue on the top
18 there referring to their margins. There was a reference here
19 to saying -- Delta is saying we can go after a large Latin
20 and Florida leisure markets. They were saying those are
21 future additions to their network and they say those are
22 JetBlue's main profit drivers. So Delta could say what they
23 meant exactly, but when I read that, I see them saying let's
24 go after JetBlue where it hurts.

25 **Q.** You're not saying there's anything wrong with that. Are

1 you?

2 **A.** No, that's competition.

3 **Q.** And is that something that is potentially a threat to
4 JetBlue?

5 **A.** I mean, all of this is potentially a threat to JetBlue.
6 The thing about JetBlue that's been said in here that I agree
7 with is JetBlue is sort of trying to be a somewhat unique low
8 cost carrier and that -- especially in Boston, they're able
9 to compete for the broad range of customers including
10 business travelers. Delta is better with their network at
11 competing for business travelers, so they are a major threat
12 to JetBlue. And on top of that, they're now saying not only
13 are they going to be better with business travelers, they're
14 going to go after JetBlue's core leisure markets. So this
15 is -- I mean, Boston, if you read these documents and you
16 also just think about airline economics, Delta has a hub.
17 Other legacy carriers are not going to match that. So Boston
18 sets up as a fight between JetBlue and Delta in which JetBlue
19 needs a network that enables it to have that fight.

20 **Q.** Okay. Let's look at a little bit more data, and we'll
21 move on to DX925, something that I believe you prepared.
22 What is this?

23 **A.** So this is just -- these are nonstop destinations,
24 similar to some things we looked at in New York. These are
25 nonstop destinations out of Boston. You can see JetBlue is

1 still -- as point-to-point carrier, JetBlue has, you know,
2 basically their business is nonstop. So they have gone from
3 59 to 72 nonstop destinations out of Boston. But in the same
4 time period, Delta has gone from 25 to 58. So as part of
5 this focus on Boston, and then turning it into a hub in 2019,
6 Delta has greatly increased the number of nonstop
7 destinations it has out of Boston.

8 And then the thing I would add -- just to put this
9 in perspective, remember Delta is a hub carrier, right?
10 Here, but also in, say, Atlanta. The other thing that Delta
11 can bring to this picture is if they get you from Boston to
12 Atlanta, they can get you literally anywhere in the world.
13 So JetBlue is losing its advantage in terms of nonstop
14 destinations and having to now fight with a much larger Delta
15 network.

16 **Q.** And these data end in 2019. So has there been any
17 increase in the number of nonstop destinations served out of
18 Boston by Delta since then?

19 **A.** Yeah, Delta has continued to grow these. I don't
20 remember the exact number. I know that as far as daily
21 flights, the last exhibit had Delta growing to something in
22 the mid hundreds. And I know they're pushing that over 200.
23 But Delta continues to grow on all of these metrics.

24 **Q.** Okay. So what is the significance of that for the
25 question of whether the combination of JetBlue and American

1 can create market power on Boston routes?

2 **A.** It's just the same story that I've been telling. Boston
3 was a different sort of city until a couple of years ago, in
4 the sense that it was the largest domestic city that didn't
5 have a hub. I think some of that is the location way off in
6 the far Northeast. But Delta has now, similar to what
7 they've done in the Northwest in Seattle, in the Northeast
8 they have made Boston a hub.

9 So now we are in the situation where we have a
10 legacy hub carrier. You're not going to have two. The best
11 competition that's going to come is going to come from
12 JetBlue.

13 And JetBlue is not going to be in a position to
14 exercise market power. The question is not market power for
15 anybody else. The question is how do you constrain the
16 potential market power that Delta would have? A stronger
17 JetBlue is the best way to constrain that market power, as
18 opposed to potentially exercising market power.

19 **Q.** Great. Let's talk now about the routes where American
20 and JetBlue either overlap or don't. And I think slide 12 in
21 your demonstrative is similar to the one that we saw for New
22 York. So could you take us through that?

23 **A.** Yeah, sure.

24 So this is, Your Honor, what we looked at before.
25 So we counted in the same way. The one thing that's

1 different here, I would note, is that Boston has the
2 carve-outs, so the six routes that are listed at the top. I
3 think it's -- I'll give myself a memory test. I think it's
4 Boston to Philadelphia, Charlotte, Phoenix, Dallas, Syracuse,
5 and Rochester --

6 **Q.** Six out of six.

7 **A.** -- are carved out there at the top.

8 THE COURT: I thought it was seventh, though, now.

9 THE WITNESS: Seventh is New York to Antigua.

10 MR. WALL: You get extra credit.

11 THE WITNESS: Six out of six in Boston, though. If
12 you count that one off, I only get a B.

13 So in the bottom is the same counting of overlaps,
14 the way I did it for New York. The thing that I would note
15 here is that it's 36 out of -- of the ones that are not
16 carved out, it's 36 out of 41, I guess, that are not overlaps
17 at all. And then, again, similarly, the vast majority of the
18 traffic is on routes with multiple substantial competition.

19 Internationally, you know, there's not -- neither
20 American or JetBlue providing a lot of international service
21 out of Boston. The one overlap here is Boston to Cancun, but
22 a relatively big leisure with lots of competition.

23 BY MR. WALL:

24 **Q.** Okay. Now, one thing about --

25 THE COURT: So the nonoverlap, nonstops, it's

1 essentially those are places they each flew to beforehand,
2 and the other didn't fly there?

3 THE WITNESS: Correct.

4 THE COURT: And that's 60 percent of the traffic.

5 THE WITNESS: Of the traffic, correct.

6 BY MR. WALL:

7 **Q.** I have a question about that. And it's literally a
8 question; I don't know the answer to it. Would that number
9 also include routes that somebody offers nonstop that neither
10 American nor JetBlue fly?

11 **A.** I believe this is only routes. I would have to check my
12 backup, but given the accounts here, I believe this is only
13 routes that one or the other of them flies.

14 THE COURT: And are these -- so the Boston to some
15 destination neither of them fly are not in here.

16 THE WITNESS: Like I said, I would want to check my
17 work papers, but that's my recollection.

18 THE COURT: And 36, one of those routes, presumably
19 somewhere American flies that JetBlue didn't, and at least
20 one is presuming that JetBlue flew that American didn't.

21 THE WITNESS: Correct.

22 THE COURT: Whether there's anyone else flying on
23 that route, whether there's no one else or ten other carriers
24 or anywhere in between, that's not --

25 THE WITNESS: Correct.

1 THE COURT: -- revealed here.

2 THE WITNESS: That's correct. They're not an
3 overlap, so from that point of view, there was not -- there
4 wasn't competition.

5 THE COURT: Yes. I understand. Go ahead.

6 MR. WALL: Okay. Great. Thank you.

7 BY MR. WALL:

8 Q. All right. So one last question on this. So there are,
9 I think by this, 24 percent of the Boston domestic passengers
10 that are on routes where there's either one other carrier
11 besides American and JetBlue, or two other carriers among
12 JetBlue. Now, just to be clear, so we understand the math
13 here, on all of those, they're both American and JetBlue are
14 present, and prior to the NEA were competing with each other
15 fully independently, correct?

16 A. That's correct.

17 Q. But also, I guess, by construction, if I understand it,
18 that means that all such routes have an LCC on them, namely
19 JetBlue, right?

20 A. That's correct.

21 Q. And so if JetBlue doesn't change its business model or
22 its pricing philosophy or anything like that, as some of the
23 witnesses have said, would you expect that the -- that the
24 NEA would lead to any reduction of pricing competition on
25 those routes?

1 **A.** No. I mean, based on everything that I've ever studied
2 about JetBlue, in every setting, JetBlue has the JetBlue
3 effect, and you would expect that to continue.

4 **Q.** And if the JetBlue effect were not to continue, is that
5 something that you think would be observable with standard
6 industry data and econometric techniques?

7 **A.** I don't think you'd need fancy econometrics. I think it
8 would jump off the page. The JetBlue effect is very
9 detectable, and if the JetBlue effect were to go away, that
10 would be very detectable.

11 And to make one more point, most of these routes
12 either have or likely could have Delta on them, so beyond
13 just statements about business models, which are very
14 important, it also -- I mean, JetBlue has to compete with
15 Delta. JetBlue has one business model by which it competes.
16 So to me the idea that JetBlue could try to compete with
17 Delta by being something besides what they are, doesn't make
18 any sense. But if they change their model, that would leap
19 off the page at you.

20 MR. WALL: Thank you.

21 Your Honor, I'm about to go on to a deep dive with
22 the NEA terms, and I see I only have about three minutes
23 left.

24 THE COURT: You can't do it in three?

25 MR. WALL: We're going to get into math, which I

1 think will make Your Honor very happy.

2 THE COURT: Sure. Then no point in starting that
3 with three minutes left. Okay.

4 So I'll get back to you on the privilege question
5 after I talk to Judge Robertson. And I'll see you Monday at
6 9:00 a.m.

7 MR. WALL: Thank you very much, Your Honor.

8 THE COURT: And so for now, I just reserve Tuesday,
9 Wednesday, Thursday, and then you'll let me know.

10 MR. WALL: Monday, Tuesday, Wednesday, Thursday?

11 THE COURT: Yes, Monday is reserved.

12 MR. WALL: Okay.

13 THE COURT: All right. Have a nice week. I will
14 see you next week.

15 (Court in recess at 12:57 p.m.)
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T I O N

I certify that the foregoing is a correct transcript of the record of proceedings in the above-entitled matter to the best of my skill and ability.

/s/ Rachel M. Lopez

October 17, 2022

/s/ Robert W. Paschal

Rachel M. Lopez, CRR

Date

Robert W. Paschal, RMR, CRR

Official Court Reporters